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1947

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1947

ANNOTATED

NINE VOLUMES

COMPILED, REVISED AND ANNOTATED
UNDER CHAPTER 184, LAWS OF 1945 AND CHAPTER 266, LAWS OF 1947
AND PUBLISHED UNDER CHAPTER 43, LAWS OF 1947

I. W. Choate
Wesley W. Wertz
CODE COMMISSIONERS
OF THE 1947 CODE

SECOND REPLACEMENT VOLUME 4

PART 2

Public Utilities to Schools

Containing the Permanent Laws of the State in Force at the Close of the Extraordinary Session of the Forty-second Legislative Assembly of 1971

Publishers
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PREFACE

to

Second Replacement Volume 4 (Part 2)

The original Volume Four of the Revised Codes of Montana, 1947 first was replaced after the 1953 Session of the Legislative Assembly. By 1962, supplementary materials had grown to such an extent that it was necessary to issue a replacement in two separate volumes, entitled Part 1 and Part 2. In 1970, a second replacement of Volume Four (Part 1) was published.

The 1971 Legislative Assembly enacted numerous laws that revise completely the provisions of Title 75, relating to the public schools and the Montana university system. The new school laws, including all amendments and annotations, cover almost 350 pages.

A new issue of Replacement Volume Four, Part 2 was suggested and publication of this second edition was approved by the Supreme Court of Montana under the authority granted to it by Laws 1967, Chapter 304 (Sec. 12-332.1, Repl. Vol. 2 (Part 1), Revised Codes of Montana, 1947).

This Second Replacement Volume Four, Part 2 contains all existing laws in Titles 70 to 75, inclusive, of the Revised Codes through the regular session and the extraordinary session of the Forty-second Legislative Assembly. All notes and annotations have been brought to date. Obsolete laws, local and special laws, appropriation acts, resolutions, and enacting and repealing clauses are excluded.

The arrangement and numbering system of the first replacement volume have been retained; hence the General Index and its supplement may be used as before in locating particular laws. Legislative history references have been brought to date and no changes have been made in the general style used heretofore.

Annotations to decisions of the Supreme Court of Montana and to the Supreme Court of the United States and other Federal courts have been checked and added through Volume 154 Montana Reports, Volume 478 Pacific 2d, Volume 399 United States Reports, Volume 26 Lawyers' Edition 2d, Volume 90 Supreme Court Reporter, Volume 433 Federal Reporter 2d, Volume 318 Federal Supplement, and Volume 36 American Law Reports 3d.

PREFACE

This volume may be cited as 2d Repl. Vol. 4 (Part 2), Revised Codes of Montana, 1947. When referring to sections, we recommend citing "See sec. —, 2d Repl. Vol. 4 (Part 2), Revised Codes of Montana, 1947."

To Wesley W. Wertz, Code Commissioner of the 1947 Codes, we extend our thanks for his advice and able assistance in the preparation of this volume.

The Publishers

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REVISED CODES OF MONTANA 1947

TITLE 70

PUBLIC UTILITIES

Chapter

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 Telegraph, telephone and electric light and power lines, 70-301 to 70-303.
 Television, 70-401 to 70-426.
 Electric suppliers' territorial integrity, 70-501 to 70-508.
 Underground Conversion of Utilities Law, 70-601 to 70-635.

(Note: Common carriers are treated at Title 8; Railroads are treated at Title 72.)

CHAPTER 1

PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

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 - Creation of public service commission. 70-102. Railroad commissioners as ex officio commission.
 - 70-103. "Public utility" defined.
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Enforcement of rates or charges. Action to set aside rates or charges fixed by commission. 70-128.

70-129. Investigation of accidents-report as to accident.

Public utility violating laws or failing to comply with order. Verification of reports and statements—perjury. Recovery of forfeitures and penalties. 70-130.

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70-133. Mandamus, injunction and other remedies.

70-134. Traveling expenses of commission. 70-135. Effect of invalidity of part of law.

70-101. (3879) Creation of public service commission. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R. C. M. 1921.

Cross-Reference

Commission continued as head of department of public service regulation, sec. 82A-1702.

Constitutionality

Section 70-101 et seq., creating a public service commission and defining its pow-ers, are constitutional. Public Service Commission v. City of Helena, 52 M 527, 159 P 24.

Regulations made by the public service commission must be reasonable in order to be valid, and any regulation which imposes upon a city an obligation which is invalid is not reasonable. Public Service Commission v. City of Helena, 52 M 527, 159 P 24.

The act conferring authority upon the public service commission must be construed in harmony with the theory of selfgovernment in cities, and the retention of police power by the state. Public Service Commission v. City of Helena, 52 M 527, 159 P 24.

Inasmuch as a franchise contract made in 1912 between a city and a gas company must be presumed to have been entered into with knowledge that the state could thereafter enact legislation toward exercising the power of rate regu-lation reposed in it, and thus change the rates fixed by the contract, this act is not open to attack on the ground that it impairs the obligation of the contract made the year before. State ex rel. City of made the year before. State ex rel. City of Billings v. Billings Gas Co., 55 M 102, 111, 173 P 799, distinguished in 99 M 465, 478, 44 P 2d 735. See also Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 207, 293 P. 294, for discussion of constitutionality of the Public Service Commission Act.

Franchise Ordinance

An ordinance granting a public utility franchise after the enactment of the public service commission law is not invalid merely for the reason that such act vests exclusive jurisdiction in the commission, but is valid until the commission sees fit to act; until then the rate of compensa-tion payable by the company is valid and binding. City of Baker v. Montana Petroleum Co., 99 M 465, 44 P 2d 735.

Powers of Commission

In the enactment of this law the legislature intended to provide a comprehensive and uniform system of regulation and control of public utilities, by a specially created tribunal, through which the state itself exercises its sovereign power. State ex rel. City of Billings v. Billings Gas Co., 55 M 102, 112, 173 P 799.

The public service commission is a creathe public service commission is a creature of, and clothed with only such powers as are clearly conferred upon it by, the statute to which it owes its being. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 207, 293 P 294.

The legislature in enacting the Public Service Commission Act intended not only

to empower the commission to regulate charges or fix rates, but also to see to it that reasonable service is rendered by the utility and that its equipment is reasonably adequate. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 207, 293 P 294.

The public service commission, under its power to regulate a public utility, is clothed with authority not only to fix maximum, but also minimum or precise rates. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 293

Order of the public service commission directing electric power company furnishing electricity to a small town to install a telephone service for the convenience of its 225 customers was not unlawful or unreasonable. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 533, 98 P 2d 886.

Public Utilities Defined

An irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of this act, and is therefore not subject to supervision and regulation by the public service commission. State ex rel. Thatcher v. Boyle, 62 M 97, 204 P 378.

When one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to control by the public for the common good to the extent of the interest he has thus created. Great Northern Utilities Co. v. Public

Service Commission, 88 M 180, 207, 293 P

Collateral References

Public Service Commissions € 1.
73 C.J.S. Public Utilities § 32.
43 Am. Jur. 700 et seq., Public Utilities and Services, § 192 et seq.

Law Review

The "fair value" text in Montana public utility rate regulation, 22 Mont. L. Rev. 65 (Fall 1960).

70-102. (3880) Railroad commissioners as ex officio commission. The board of railroad commissioners of the state of Montana shall be ex officio the public service commission hereby created, and for the purposes of this act shall be known and styled "Public Service Commission of Montana." It shall provide itself with a seal bearing these words, by which its official acts shall be authenticated in all cases where a seal is required; and in the name as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the public service commission shall be kept entirely separate from that of the railroad commission.

History: En. Sec. 2, Ch. 52, L. 1913; re-en. Sec. 3880, R. C. M. 1921.

Cross-Reference

Railroads, powers with respect to, sec. 72-114 et seq.

70-103. (3881) "Public utility" defined. The term "public utility," within the meaning of this act, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment, within the state, for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street-railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns and villages, or elsewhere, telegraph or telephone service; and the public service commission is hereby invested with full power of supervision, regulation, and control of such utilities, subject to the provisions of this act, and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R. C. M. 1921.

Intent of Act

It was the intention of the legislature to go no further than to provide that, within the limited sphere of its jurisdiction, the public service commission may make reasonable regulations which the city must heed, and to that extent only is the authority of the city superseded. It was not intended to take from the city the active management of its water plant, or the authority to appoint the proper officers and employees to operate it, or to interfere with such officers in the proper discharge of their duties. Public Service Commission v. City of Helena, 52 M 527, 541, 159 P 24.

Public Utilities Defined

A city engaging in the water business is a public utility. Public Service Commission v. City of Helena, 52 M 527, 159 P 54; Leischner v. Knight, 135 M 109, 112, 337 P 2d 359, 361.

An irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of this act and is therefore not subject to supervision and regulation by the public service commission. State ex rel. Thatcher v. Boyle, 62 M 97, 204 P 378.

Foreign corporation which was licensed to do business in Montana, conveyed natural gas by pipeline from a neighboring state into this state and furnished it to a domestic corporation whose entire capital stock with the exception of five of 2,500 shares it owned, for distribution to its customers, was a public utility within the meaning of this section, and as such, subject to the jurisdiction of the public section. diction of the public service commission of Montana and therefore required to furnish such commission annual reports of its operations. Gallatin Natural Gas Co. v. Public Service Commission, 79 M 269, 275, 256 P 373.

When one devotes his property to a use in which the pubic has an interest, he in effect grants to the public an in-terest in that use and must submit to control by the public for the common good to the extent of the interest he has thus created. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 207, 293 P 294.

Water for business fire protection was a "business use" within this section so that city supplying water for that purpose was a public utility as defined by this section. City of Polson v. Public Service Commission, — M —, 473 P 2d 508.

Water May Be Clothed with Public Interest

In an action to enjoin the inhabitants of a town from further use of a ditch which they had tapped for domestic uses over a period of years, considerable argument was made that plaintiffs were a public utility under this section, and therefore subject to jurisdiction of public service commission, but the commission was not a party to the action and court did not pass on the point, but did hold that property (including water) may be clothed with a public interest depending upon the extent and character of the use, making it a public consequence and affecting the community at large. Sherlock v. Greaves, 106 M 206, 221, 76 P 2d 87.

Collateral References

Public Service Commissions 6.3. 73 C.J.S. Public Utilities § 1 et seq. 43 Am. Jur. 571, Public Utilities and Services, § 2.

70-104. (3882) Power to prescribe rules of procedure—judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test, in a court of competent jurisdiction, the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

History: En. Sec. 4, Ch. 52, L. 1913; re-en. Sec. 3882, R. C. M. 1921.

Commission May Not Adjudicate Water Rights

Where district court issued a writ of prohibition restraining commission from entertaining a complaint of farmers that a hydroelectric company, by storing water for use in its operations incident to generating electricity for public use, was depriving them of water for irrigation purposes, held, on application for writ of supervisory control to annul the writ, that the farmers were asking in effect for an adjudication of water rights, a judicial function belonging to the court which, under this section, the commission is precluded from exercising. State ex rel. Public Service Commission v. District Court, 107 M 240, 241, 84 P 2d 335.

Informal Hearing

Fundamentals of a fair hearing, required by section 27, article III of the Montana constitution, were denied parties opposing rate increase when a hearing was held by the public service commission without the presence of the opponents, and when the testimony of that hearing was not spread on the record. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 864.

Legislature Not to Exercise Judicial Function through Commission

Under section 1, article IV of the constitution, prohibiting either one of the

three departments of the state government from exercising any of the powers properly belonging to either of the others, the legislature cannot, through the medium of the public service commission, exercise judicial powers. State ex rel. Public Service Commission v. District Court, 107 M 240, 242, 84 P 2d 335.

Posthearing Audit

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to

go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by commission employees. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 869.

Collateral References

Public Service Commissions . 8.
73 C.J.S. Public Utilities §§ 6, 49.
43 Am. Jur. 700 et seq., Public Utilities and Services, § 193 et seq.

70-105. (3883) Public utilities to furnish service for reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph, or telephone service, produced, transmitted, delivered, or furnished, or for any service to be rendered as or in connection with any public utility, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913; re-en. Sec. 3883, R. C. M. 1921.

Cross-References

Construction of electric lines, regulations, secs. 24-101 to 24-144.

Electrical energy producers tax, sec. 84-1601 et seq.

Natural gas distributors tax, sec. 84-2101 et seq.

Charge for Tapping Water Mains

A flat rate charge by the city for the "service" of tapping water mains located entirely within the public right of way, based on an average cost experience over a period of years yielding no over-all profit to the city, is reasonable and valid under this section. Leischner v. Knight, 135 M 109, 337 P 2d 359.

Denial of Service

Public utility is not permitted under this section to deny service on grounds that its facilities are in poor condition. City of Polson v. Public Service Commission, — M —, 473 P 2d 508.

Collateral References

Electricity = 11.3(5); Public Service Commissions = 7.4; Telecommunications = 310; Waters and Water Courses = 203(10).

29 C.J.S. Electricity § 34; 73 C.J.S. Public Utilities § 25; 86 C.J.S. Telegraphs, Telephones, Radio and Television § 86; 94 C.J.S. Waters § 293

94 C.J.S. Waters § 293.
43 Am. Jur. 624 et seq., Public Utilities and Services, § 81 et seq.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 ALR 2d 595.

Right of public utility to discontinue line or branch on ground that it is unprofitable. 10 ALR 2d 1121.

Right to cut off water supply because of failure to pay sewer service charge. 26 ALR 2d 1359.

Variation of utility rates based on flat and meter rates, 40 ALR 2d 1331.

70-106. (3884) Power of commission to ascertain property values. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R. C. M. 1921.

Commission May Not Fix Rates so Low as To Take Property

The public service commission, in regulating rates, should under this section ascertain the present fair value of the utility; rates must be fair and reasonable, as well as the return on its investment for services rendered; the commission cannot under the law fix rates so low as to result in taking of property without just compensation to the owner. No particular method is required but it must be done under proper legal procedure and restrictions. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 528, 98 P 2d 886.

Investigation by Commission

The provision of this section authorizing the commission to make an investigation is permissive only and it is not mandatory that the commission make its separate investigation. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 639.

Leaseholds

Value of gas leases was properly included in rate base for power company seeking increased natural gas rate where there was ample testimony as to the leaseholds being used and useful to support the public service commission. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 870.

Method of Ascertaining Value of Property

Commission did not err in fixing the value of the plant where they considered reproduction cost new less depreciation; the original cost less depreciation; and the assessed value so far as taxable property was concerned. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 637.

The statute is silent as to what methods the commission must use in ascertaining the value of the property and the commission has a wide latitude in choosing a method of arriving at the value of the plant used and useful in serving the public. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 637.

Value of Property

While the statute does not establish a formula for arriving at fair value, it does require such value to be found and used as a base in fixing rates. The reasonableness and justness of the rates must be related to this finding of fair value. State ex rel. Olsen v. Public Service Commission, 131 M 272, 309 P 2d 1035.

Value of Property at Time of Trial, Proper

In arriving at the value of the utility's property, the cost of reproduction new, less depreciation, is usually regarded as one of the most important, if not the dominant, factor; in an action to enjoin the commission from enforcing an order reducing rates, the court properly admitted evidence of that character, and determined the question of value as of the date of trial rather than upon that of the order made two years previous, because a number of changes had taken place in the interval. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 529, 98 P 2d 886.

Collateral References

Public Service Commissions 7.5.
73 C.J.S. Public Utilities § 18.
43 Am. Jur. 646 et seq., Public Utilities and Services, § 105 et seq.

Law Review

"Fair value" test in Montana public utility rate regulation, 22 Mont. L. Rev. 65 (Fall 1960).

70-107. (3885) Books, accounts and records of public utilities. Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

Every public utility engaged directly or indirectly in any other businesses than those mentioned in section 70-103 shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers, and records of such other business.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall, when necessary, furnish such blanks to each public utility.

No public utility shall keep any other books, accounts, papers, or records of the business transacted, than those prescribed or approved by the commission. Each public utility shall have an office in one of the towns, villages, or eities in this state, in which its property, or some part thereof, is located, and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records, required by the commission to be kept within the state, shall at any time be removed from the state, except upon such conditions as may be prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3885, R. C. M. 1921.

Cross-Reference

Contributions for political purposes forbidden, sec. 94-1444.

70-108. (3886) Annual report to public service commission. The accounts of all public utilities shall be closed annually on either the 30th day of June or the 31st day of December, a balance sheet taken promptly therefrom, and full annual reports of the business of such utility made to the public service commission not later than the 15th day of the first following September if such accounts are closed on the 30th day of June, and not later than the 15th day of March of the first following year when such accounts are closed on the 31st day of December. The reports shall be in such form as prescribed by the commission, and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The commission may at any time call for desired information omitted from such reports, or not provided for therein, whenever, in the judgment of the commission, such information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; amd. Sec. 1, Ch. 186, L. 1919; re-en. Sec. 3886, R. C. M. 1921; amd. Sec. 1, Ch. 172, L. 1929; amd. Sec. 1, Ch. 160, L. 1945; amd. Sec. 1, Ch. 24, L. 1947.

Collateral References

43 Am. Jur. 704, Public Utilities and Services, § 196.

70-109. (3887) Right to examine books, records, etc. Any commissioner, or any person or persons authorized by the commission, shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness, and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3887, R. C. M. 1921.

Collateral References

Public Service Commissions 6. 73 C.J.S. Public Utilities § 45.

70-110. (3888) Failure of public utility to make reports or permit examinations—penalty for violation of safety regulations. Any officer, agent, or person in charge of the books, accounts, records, and papers, or any of them, of any public utility, who shall refuse or fail, for a period of thirty days, to furnish the commission with any report re-

quired by the provisions of this act, and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility, who shall refuse to permit any commissioner or other person duly authorized by the commission, to inspect such books, accounts, records, or papers on behalf of the commission, and every firm, person, corporation or association violating any safety regulation of the commission, shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars (\$1,000), such fine to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure on the part of such officer, agent, or person in charge, and each day in which a violation of a safety regulation persists, shall be deemed a separate offense, and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R. C. M. 1921; amd. Sec. 1, Ch. 248, L. 1969.

Collateral References
Corporations©=323.
19 C.J.S. Corporations § 836.
19 Am. Jur. 2d 763 et seq., Corporations, § 1361 et seq.

70-111. (3889) Records and reports of commission. The commission shall make reports as provided in section 82-4002, which reports shall, as nearly as may be, conform in a general way to those of the railroad commission of the state, and be made at the same time. All the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission shall be open to the public at all reasonable times, subject to the exception that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R. C. M. 1921; amd. Sec. 29, Ch. 93, L. 1969.

70-112. (3890) Commercial units of product or service—standard of measurement—examination and testing. The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this act.

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall establish and declare reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, which fees, however, shall be

paid by the public utility and repaid to the complaining party, if the quality or quantity of the product, or the character of the service, be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require.

The commission may, in its discretion, purchase such materials, apparatus, and standard measuring instruments for such examinations and tests as it may deem necessary.

The commission, its agents, experts, or examiners, shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this act, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made, as herein provided, shall be subject to the penalties prescribed in section 70-110.

History: En. Sec. 10, Ch. 52, L. 1913; re-en. Sec. 3890, R. C. M. 1921.

70-113. (3891) Schedules of rates, tolls and charges. Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except upon twenty days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; provided, that the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made; provided, however, that no advance or reduction of existing schedules shall be made without the concurrence of the commission. Copies of all new or amended schedules shall be filed and posted in the stations or offices of public utilities as in the case of original schedules. The commission may

prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R. C. M. 1921.

Commission Empowered To Fix Not Only Maximum but Also Minimum or Precise Rates

The public service commission, under its power to regulate a public utility (70-101 to 70-135), is clothed with authority not only to fix maximum but also minimum or precise rates. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 293 P 294. See also, Great Northern Utilities Co. v. Public Service Commission, 52 F 2d 802, 804.

Judicial Review of Rates

Order fixing utility's minimum rate so high as to repel patronage and destroy utility's investment may be judicially annulled. (Const. amend. 14.) Great Northern Utilities Co. v. Public Service Commission, 52 F 2d 802, 804.

Public service commission order fixing minimum gas rates held unreasonable, where utility sought to lower rates for purpose of self-preservation on account of joint occupancy with rival utility of a field which could support only one. (Const. amend. 14.) Great Northern Utilities Co.

v. Public Service Commission, 52 F 2d 802, 804.

Public Utility May Not Change Schedule of Rates without Concurrence of Commission

Under the rule that where one must secure leave from someone to entitle him to exercise a right, the irresistible implication is that a discretion is lodged in the other to refuse to grant it, if in his judgment it is improper or unwise to give the required consent, held, that the contention of a company engaged in furnishing gas to the inhabitants of a city, that after the filing of the initial schedule of rates with the public service commission, the company may change the schedule by the mere filling of a new one and giving the notice required by this section, and that the new schedule becomes effective without the act of concurrence on the part of the commission, may not be sustained. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 293 P 294.

Collateral References

Public Service Commissions 7 et seq. 73 C.J.S. Public Utilities §§ 13 et seq., 41. 43 Am. Jur. 710, Public Utilities and Services, § 206.

70-114. (3892) Greater or less charges than those prescribed—rebates and privileges. It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in section 70-110. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: En. Sec. 12, Ch. 52, L. 1913; re-en. Sec. 3892, R. C. M. 1921.

Existing Contracts

The concluding sentence of this section refers to the sentence immediately preceding, forbidding rebates, concessions etc., and was not intended to except from the operation of the act rate contracts made

between cities and public utilities prior to its passage. State ex rel. City of Billings v. Billings Gas Co., 55 M 102, 112, 173 P 799.

Since this section exempts from the operation of the act all "existing contracts" and does not exclude from the provisions of the exempting clause renewals or extensions of such contracts, the renewal or

extension of the contract involved in this case was not unlawful. Helena Light & Ry. Co. v. Northern Pacific Ry. Co., 57 M 93, 186 P 702, overruled on another point in City of Billings v. Public Service Commission, 67 M 29, 39, 214 P 608.

The last sentence in this section refers to the preceding sentence and not to the entire act, and means that, until changed by the commission, the rates, tolls and charges were to remain as fixed in existing contracts, even though such contracts granted rebates, concessions and special privileges, and that pending change by the commission the public utility was protected from prosecution; overruling decision in Helena Light & Ry. Co. v. Northern Pacific Ry. Co., 57 M 93, in so far as

it conflicts with the above holding. City of Billings v. Public Service Commission, 67 M 29, 214 P 608.

Collateral References

Public Service Commissions 7 et seq. 73 C.J.S. Public Utilities §§ 27, 28. 43 Am. Jur. 683-689, Public Utilities and Services, §§ 171-177.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 ALR 2d 595.

Discrimination by mutual association, nonprofit organization, or co-operative in furnishing utility services. 56 ALR 2d 413.

70-115. (3893) Classification of service. The commission may prescribe classifications of the service of all public utilities, and such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

History: En. Sec. 13, Ch. 52, L. 1913; re-en. Sec. 3893, R. C. M. 1921.

Collateral References

Public Service Commissions 7.

73 C.J.S. Public Utilities § 41. 43 Am. Jur. 689-693, Public Utilities and Services, §§ 178-184.

70-116. (3894) Rules as to inspections—public hearings. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of public utilities, and other parties before it. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R. C. M. 1921.

Collateral References

Public Service Commissions \$\sime 8\$, 10 et seq.

73 C.J.S. Public Utilities §§ 6, 45, 49. 43 Am. Jur. 715 et seq., Public Utilities and Services, § 216 et seq.

70-117. (3895) Inquiry into and investigation of management of all public utilities. The commission shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs.

Any person, other than one of said commissioners, who shall make such demand, shall produce his authority to make such inspection.

The commission may require, by order or subpoena, to be served on any public utility, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any books, accounts, papers, or records kept by such public utility in any office or place without the state of Montana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission, or under its direction.

Any public utility failing or refusing to comply with any such order or subpoena, shall be subject to the liability named in section 70-110.

History: En. Sec. 15, Ch. 52, L. 1913; re-en. Sec. 3895, R. C. M. 1921.

73 C.J.S. Public Utilities §§ 39, 54. 43 Am. Jur. 718, Public Utilities and Services, § 220.

Collateral References

Public Service Commissions 6, 16.

70-117.1. Securities issued and liens created by public utilities subject to regulations by commission. The right of every public utility, as defined in section 70-103, furnishing electric or gas service in the state of Montana, to issue, assume or guarantee securities and to create liens on its property situated within the state of Montana, is hereby subjected to the regulation and supervision of the public service commission of Montana, as hereinafter in this act set forth. Such public utility when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee other securities payable at periods of more than twelve (12) months after the date thereof, for the following purposes:

For the acquisition of property; for the construction, completion, extension or improvement of its facilities; for the improvement or maintenance of its service; for the discharge or lawful refunding of its obligations; for the reimbursement of moneys actually expended for said purposes from income or from other moneys; or for any other purpose approved by the commission.

History: En. Sec. 1, Ch. 74, L. 1961.

Collateral References

43 Am. Jur. 711-714, Public Utilities and Services, §§ 207-215.

70-117.2. Petition for issuance of securities—approval by commission. Such public utility, shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption or guarantee of securities, and the application of the proceeds therefrom for the purposes specified. The commission shall, after such hearing and upon such notice as the commission may prescribe, enter its written order approving the petition and authorizing the proposed securities transactions, unless the commission shall find: That such transactions are inconsistent with the public interest; or that the purpose or purposes thereof are not permitted by this act; or that the aggregate amount of the securities outstanding and

proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

History: En. Sec. 2, Ch. 74, L. 1961.

Collateral References

Regulating issuance of securities by public utilities through public service commission. 41 ALR 889.

70-117.3. Short term obligations issuable without commission approval. Such public utility may issue notes or drafts maturing not more than one (1) year after the date of such issue, renewal or assumption of liability, and aggregating (together with all other then outstanding notes and drafts of a maturity of one (1) year or less on which such public utility is primarily or secondarily liable) not more than 5 per centum of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this subsection [section] shall be the fair market value as of the date of issuance of such notes or drafts.

History: En. Sec. 3, Ch. 74, L. 1961.

Compiler's Note

The bracketed word "section" was inserted by the compiler.

70-117.4. Applications to be disposed of promptly—continuance. All applications to the commission hereunder shall be disposed of promptly, and in any event within thirty (30) days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said thirty (30) day period the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

History: En. Sec. 4, Ch. 74, L. 1961.

-70-117.5. Unapproved securities void. Except as provided in section 70-117.3, all securities issued, assumed or guaranteed after the effective date of this act without approval by the commission, as provided herein, shall be void.

History: En. Sec. 5, Ch. 74, L. 1961.

Compiler's Note

The effective date of this act was July 1, 1961.

70-117.6. State not obligated. No provision of this act, or any act or deed done or performed in connection therewith shall be construed to obligate the state of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of this act.

History: En. Sec. 6, Ch. 74, L. 1961.

70-118. (3896) Employment of engineer and other help—salary of secretary. The commission is authorized to employ an engineer at a salary of four thousand dollars per annum, also examiners, experts, clerks, ac-

countants, or other assistants as it may deem necessary, at such rates of compensation as it may determine upon; and it is further provided that the secretary of the public service commission shall receive an annual salary of six hundred dollars (\$600), such salary to be in addition to the salary now provided by law to be paid to the secretary of the board of railroad commissioners of the state of Montana.

History: En. Sec. 16, Ch. 52, L. 1913; amd. Sec. 1, Ch. 188, L. 1919; re-en. Sec. 3896, R. C. M. 1921.

Collateral References

Public Service Commissions € 6.
73 C.J.S. Public Utilities § 39.
43 Am. Jur. 704, Public Utilities and Services, § 196.

(3897) Complaints against public utility—hearing. Upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club, or by any body politic or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms, or corporations are directly affected thereby that any of the rates, tolls, charges, or schedule, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission, or delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act complained of, shall be entered without a formal hearing.

The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R. C. M. 1921.

Cross-Reference

Witness' fees and mileage, sec. 25-404.

Collateral References

Public Service Commissions 11 et seq.

73 C.J.S. Public Utilities § 47 et seq. 43 Am. Jur. 715-720, Public Utilities and Services, §§ 216-223.

Representation of another before state public utilities or service commission as involving practice of law. 13 ALR 3d 812.

70-120. (3898) Subpoena to witnesses. If any party ordered to appear before the commission as a witness shall fail to obey such order, the com-

mission or any member, or the secretary thereof, may apply to the clerk of the nearest district court, for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court, and punished accordingly.

History: En. Sec. 18, Ch. 52, L. 1913; re-en. Sec. 3898, R. C. M. 1921.

Cross-Reference

Contempt, sec. 93-9801 et seq.

Collateral References

Public Service Commissions 77, 19(4). 73 C.J.S. Public Utilities §§ 55, 62.

70-121. (3899) Fixing rates and making regulations on hearing—complaint by public utility. If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of this act, the commission shall have the power to fix and order substituted therefor, such rate or rates, tolls, charges, or schedules, as shall be just and reasonable. If it shall in like manner be found that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service, or acts, and make such order relating thereto, as may be just and reasonable.

When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of, and at such times and places as it may prescribe. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices, and service, after a full hearing, as above provided, by order make such changes as may be just and reasonable, the same as if a formal complaint had been made.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society, body politic, or municipal organization, or person or persons. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R. C. M. 1921.

Operation and Effect

Where the public service commission refuses to give its consent to a change of schedule of rates filed by a public utility, under this section the utility may make complaint and thereupon a hearing must be held and an order made, the effect of which must be just and reasonable. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 203, 293 P 294.

Commission may exercise its powers under this section against city serving as public utility, even though interfering thereby with city's control of its water department. City of Polson v. Public Service Commission, — M —, 473 P 2d 508.

Collateral References

Public Service Commissions 57, 17.
73 C.J.S. Public Utilities §§ 41, 55.
43 Am. Jur. 706-711, 725, Public Utilities and Services, §§ 201-206, 228.

Discrimination between property within and that outside governmental districts as to public service or utility rates. 4 ALR 2d 595.

Variations of utility rates based on flat and meter rates. 40 ALR 2d 1331.

70-122. (3900) Depositions of witnesses. The commission, or any party to any proceeding before it, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913; re-en. Sec. 3900, R. C. M. 1921.

Cross-Reference

Depositions and discovery, M. R. Civ. P., Rules 26-32.

Collateral References

Depositions 5.

26A C.J.S. Depositions § 15.

23 Am. Jur. 2d 357, Depositions and Discovery, § 3.

70-123. (3901) Records of proceedings—copies. A full and complete record shall be kept of all proceedings before the commission or its representatives on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as hereinafter provided for the bringing of actions against the commission, before the action is reached for trial the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation to be filed with the clerk of the court in which the action is pending.

History: En. Sec. 21, Ch. 52, L. 1913; re-en. Sec. 3901, R. C. M. 1921.

Collateral References

Public Service Commissions 31. 73 C.J.S. Public Utilities § 64.

70-124. (3902) Privilege of witnesses—perjury. No person shall be excused from testifying, or from producing books and papers, in any proceedings based upon or growing out of any alleged violation of the provisions of this act, on the ground of, or for the reason that, the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History: En. Sec. 22, Ch. 52, L. 1913; re-en. Sec. 3902, R. C. M. 1921.

70-125. (3903) Refusal of public utility to fill blanks or produce evidence. Any officer, agent, or employee of any public utility who shall willfully fail or refuse to fill out and return any blanks as required by this act, or shall willfully fail or refuse to answer any questions therein propounded, or shall knowingly or willfully give a false answer to any such questions, or shall evade the answer to such questions, where the fact inquired of is within his knowledge, or who shall, upon proper demand, willfully fail or refuse to exhibit to any commission or any commissioners, or any person also authorized to examine the same, any book, paper, or

account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in section 70-110.

History: En. Sec. 23, Ch. 52, L. 1913; re-en. Sec. 3903, R. C. M. 1921.

19 C.J.S. Corporations § 836. 19 Am. Jur. 2d 766 et seq., Corporations, § 1365 et seq.

Collateral References Corporations 323.

70-126. (3904) Investigation of violation of law—duty of attorney general and prosecuting attorneys. The commission shall inquire into any neglect or violation of the laws of this state by any such public utility as hereinbefore defined, doing business therein, or by the officers, agents, or employees thereof, and shall have the power, and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the attorney general; upon the request of the commission it shall be the duty of the attorney general, or the prosecuting attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 24, Ch. 52, L. 1913; re-en. Sec. 3904, R. C. M. 1921.

(3905) Enforcement of rates or charges. All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced, and shall be prima facie lawful, from the date of the order until changed or modified by the commission, or in pursuance of the next section. All regulations, practices, and service, prescribed by the commission, shall be enforced and action shall be brought for that purpose, pursuant to the provisions of the next section, or until changed or modified by the commission itself upon satisfactory showing made.

History: En. Sec. 25, Ch. 52, L. 1913; re-en. Sec. 3905, R. C. M. 1921.

Cross-Reference

Mandamus, injunction and other remedies, sec. 70-133.

Mandamus Lies To Compel Obedience to Orders

In view of the provisions of this section and section 70-128, that the rates fixed by the public service commission for a public utility shall remain in full force and effect pending final determination by the courts of a proceeding calling them in question, and section 70-133, specifically authorizing mandamus proceedings to compel obedience to the orders issued, the fact that a proceeding questioning the legality of the rates is pending in court does not bar the commission from applying for a writ of mandate to compel obedience to its order pendente lite. State ex rel. Public Service Commission v. Great Northern Utilities Co., 86 M 442, 446, 284 P 772.

Orders Prima Facie Lawful

Under this act, rates fixed by the public service commission for a public utility furnishing hot-water heat in a city are prima facie lawful, can be attacked in court on the sole ground that they are unlawful or unreasonable, and must be deemed reasonable and just until final determination by the courts, the burden of proof resting upon the party attacking the order of the commission. Billings Utility Co. v. Public Service Commission, 62 M 21, 29, 203 P 366.

The orders of the public service com-mission are by this section made prima facie lawful until changed or modified. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 202, 293

Power of State

The establishment of a rate is a legislative, and not a judicial, act, and the power of the courts is circumscribed and restrained so far as interference with determinations reached within the scope of

legislative authority is concerned. Billings Utility Co. v. Public Service Commission,

62 M 21, 29, 203 P 366.

A municipality and a party to whom it grants a franchise to construct and operate a public heating plant enter into the contract with the knowledge that while the municipality may contract respecting rates, the state may at any time there-after in furtherance of the public welfare exercise its inherent power of rate regulation and control. City of Billings v. Public Service Commission, 67 M 29, 35, 214 P 608, distinguished in 99 M 465, 480, 483, 44 P 2d 735.

Power To Change Rates

The act creating the public service commission confers upon the commission the power, within the lawful exercise of its authority, to change the rates, tolls and charges in public utility contracts, even though they existed prior to the passage of the act. City of Billings v.

Public Service Commission, 67 M 29, 35,

The legislature in enacting the Public Service Commission Act intended not only to empower the commission to regulate charges or fix rates, but also to see to it that reasonable service is rendered by the utility and that its equipment is reasonably adequate. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 202, 293 P 294.

The public service commission, under its power to regulate a public utility (70-101 to 70-135), is clothed with authority not only to fix maximum, but also minimum or precise rates. Great Northern Utilities Co. v. Public Service Commission, 88 M 180, 293 P 294.

Collateral References

Public Service Commissions 7, 21. 73 C.J.S. Public Utilities §§ 41, 67. 43 Am. Jur. 719, Public Utilities and 43 Am. Jur. 719, Public Services, § 223.

70-128. (3906) Action to set aside rates or charges fixed by commission.

- (1) Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.
- All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to such commission. Any party in interest being dissatisfied with the order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing or prescribing any rule, regulation, practice, or service, may apply to the district court having jurisdiction, for, and upon proper showing there shall be issued by such court, an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. All orders of the commission shall become operative within twenty days after the filing of the order by the commission subject to the right of stay and injunction as hereinbefore provided. As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the

plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will pay all damages which the opposite party may sustain by reason of the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination, or in proceedings involving rates the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

- (3) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence, the commission shall consider the same, and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.
- (4) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.
- (5) Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.
- (6) In all actions under this act, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1937.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, M. R. Civ. P., Table A.

Burden of Proof

In order to overcome the statutory presumption that all rates established by the commission are prima facie lawful, the attacking party must present clear and convincing proof showing manifest error. Mountain States Telephone & Telegraph Co. v. Public Service Commission, 135 M 170, 338 P 2d 1044.

Where the company's proof showed only a conflict of fact between the company and the commission on the rate base and rate of return and did not otherwise show wherein the rates were confiscatory, it failed to carry the burden of proof and an injunction was properly denied. Mountain States Telephone & Telegraph Co. v. Public Service Commission, 135 M 170, 338 P 2d 1044.

Demurrer

That part of this section which requires the commission and other parties defendant to file their answer to the complaint within thirty days does not preclude the filing of a demurrer. There is no reason why the commission may not properly demur upon grounds which raise only questions of law that are preliminary to a consideration of the case on the merits. As to the contention that this results in the delay of the trial, it is sufficient to say that it is proper for the court to extend the time for answering for a reasonable time after disposition of the demurrer. State ex rel. Olsen v. Public Service Commission, 129 M 106, 283 P 2d 594, 596.

Grounds for Injunction

Bare assertions that the commission's findings are unreasonable, unlawful and confiscatory will not, without more, be sufficient to invoke the court's jurisdiction for an injunction. Mountain States Telephone & Telegraph Co. v. Public Service Commission, 135 M 170, 338 P 2d 1044.

Jurisdiction

Where neither the parties nor the facts are the same in two cases to set aside orders of public service commission, and no effort to consolidate the two cases was ever made, court in one case was not deprived of jurisdiction to enter judgment on theory that other court had first obtained jurisdiction of the appeal. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 863.

Review on Appeal

On review, if the commission's order and findings therein are supported by evidence and credible proof, the courts will sustain it. State ex rel. Olsen v. Public Service Commission, 131 M 272, 309 P 2d 1035, 1040.

Transmission of Evidence from Court to Commission

Under this section, in an action to enjoin the commission from enforcing an order reducing electric power rates, where the court admits evidence of changes in the utility's property since the date of the commission's order and time of trial, it must, before rendering judgment, furnish the commission with the transcript of the evidence, and it is thereupon the duty of the commission to consider such evidence. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 530, 98 P 2d 886.

Venue

In construing section 93-2902, declaring that a cause of action against a public officer for an act done by him by virtue of his office must be tried in the county where the cause of action, or some part thereof, arose, held, that for the purpose of venue, the place of trial of a proceeding questioning the reasonableness of rates fixed by the public service commission, under this section, was in the counties in which the order reducing rates was to be put into operation, its enforcement, and not where the mere making of the order occurred in the commission's office at the state capitol. Montana-Dakota Utilities Co. v. Public Service Commission, 111 M 78, 80, 107 P 2d 533.

Collateral References

Public Service Commissions \$\sim 25. 73 C.J.S. Public Utilities § 66. 43 Am. Jur. 720 et seq., Public Utilities and Services, § 224 et seq.

Injunction: adequacy, as regards right to injunction, of other remedy for review of order fixing public utility rates. 8 ALR 2d 839.

Representation of another before state public utilities or service commission as involving practice of law. 13 ALR 3d 812.

DECISIONS UNDER FORMER LAW

Federal Holding on Inhibition against Stay or Injunction Prior to Final Determination

On appeals from decrees of the U. S. district court which dismissed, for lack of jurisdiction, two suits to set aside orders of the public service commission requiring appellant to reduce its charges for electricity in Baker and Forsyth, held (in reversing the decisions), that the court could not conclude that a "plain, speedy and efficient remedy" exists in the state courts under the former inhibition of this section against stay or injunction prior to final determination to apply the so-called Johnson Act (48 Statutes

at Large, ch. 283, p. 775) amending Par. one, Sec. 24, Judicial Code (U. S. C., Tit. 28, Sec. 41). Mountain States Power Co. v. Public Service Commission, 299 US 167, 81 L Ed 99, 57 S Ct 168.

Federal court did not have jurisdiction of suit to enjoin rate order issued by state public service commission on ground that statute denied supersedeas or stay in state court, where United States supreme court had held a similar statute of state void as denying due process, and another statute would permit state court to grant stay on proper showing (see 93-4204 et seq.). Montana Power Co. v. Public Service Commission, 12 F Supp 946, 952.

70-129. (3907) Investigation of accidents—report as to accident. The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon. The testimony taken at such hearing shall be transcribed and filed in the office of the commission.

It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident, such as is mentioned above, to report by telegraph, followed by written report, the same to the commission, in which report shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. The commission shall prescribe forms for the purpose of making such written reports. Reports of accidents as referred to in this section shall be included in the commission's annual report to the governor.

History: En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R. C. M. 1921.

Compiler's Note

Section 70-111, as amended in 1969, requires the commission to make reports as provided in section 82-4002. The latter section calls for biennial reports.

70-130. (3908) Public utility violating laws or failing to comply with order. If any public utility shall violate any provision of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate or do any act herein prohibited, for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such public utility shall be subject to the penalty prescribed by section 70-110.

History: En. Sec. 28, Ch. 52, L. 1913; re-en. Sec. 3908, R. C. M. 1921.

Collateral References Corporations \$\infty\$ 396. 19 C.J.S. Corporations § 992.

70-131. (3909) Verification of reports and statements—perjury. Every annual report, record, or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record or statement shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913; re-en. Sec. 3909, R. C. M. 1921.

70-132. (3910) Recovery of forfeitures and penalties. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney general of Montana shall be the counsel in any proceeding, investigation, hearing, or trial,

prosecuted or defended by the commission, as also shall any prosecuting attorney selected by said commission, or other special counsel furnished said commission in any county where such action is pending.

History: En. Sec. 30, Ch. 52, L. 1913; re-en. Sec. 3910, R. C. M. 1921.

Collateral References Corporations 396. 19 C.J.S. Corporations § 992.

70-133. (3911) Mandamus, injunction and other remedies. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

History: En. Sec. 31, Ch. 52, L. 1913; re-en. Sec. 3911, R. C. M. 1921.

Operation and Effect

In view of the provisions of sections 70-127 and 70-128, that the rates fixed by the public service commission for a public utility shall remain in full force and effect pending final determination by the court of a proceeding calling them in question, and the provision of this section specifically authorizing mandamus proceedings to compel obedience to the orders issued, the fact that a proceeding ques-

tioning the legality of the rates is pending in court does not bar the commission from applying for a writ of mandate to compel obedience to its order pendente lite. State ex rel. Public Service Commission v. Great Northern Utilities Co., 86 M 442, 446, 284 P 772.

Collateral References

Injunction: adequacy, as regards right to injunction, of other remedy for review of order fixing public utility rates. 8 ALR 2d 839.

70-134. (3912) Traveling expenses of commission. The commission and secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R. C. M. 1921.

Collateral References
Public Service Commissions 5.
73 C.J.S. Public Utilities § 36.

70-135. (3913) Effect of invalidity of part of law. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or inoperative for any cause shall not be deemed to affect any other section thereof.

History: En. Sec. 33, Ch. 52, L. 1913; re-en. Sec. 3913, R. C. M. 1921.

Collateral References Statutes © 54(2). 82 C.J.S. Statutes § 106. 50 Am. Jur. 491, Statutes, § 474.

CHAPTER 2

MONTANA STATE BOARD OF FOOD DISTRIBUTORS EX OFFICIO MONTANA
TRADE COMMISSION—REGULATION OF PUBLIC MILLS

Section 70-201. Creation of commission.

70-202. Duties of commission.

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- Investigation of complaints. 70-226.
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- 70-229. Complaints by persons or corporations concerning their own products
- —notice of hearing—record of proceedings. Proceedings for the enforcement of law. 70-230.
- Recovery of penalties and forfeitures.

 Penalty for violation of law or failure to comply with order. 70-232.
- Traveling expenses of commission.

(3914) Creation of commission. An administrative and supervisory commission is hereby created and established, to be known as the Montana trade commission (hereinafter referred to as "the commission"), and the Montana state board of food distributors shall be, ex officio, and said board is hereby made the Montana trade commission hereby established. The Montana state board of food distributors, ex officio Montana trade commission, hereby established, shall have and possess all of the powers, and shall discharge, perform and carry out all of the duties prescribed by sections 70-202 to 70-233, and shall have such further powers and discharge such other duties as may be assigned to it by law. The Montana state board of food distributors proper shall continue under that head to possess such powers and discharge such duties as are prescribed by law.

History: En. Sec. 1, Ch. 223, L. 1919; re-en. Sec. 3914, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1943.

Cross-Reference

Commission abolished and functions transferred, sec. 82A-405.

(3915) Duties of commission. It shall be the duty of the commission hereby created to fix reasonable rules, charges, rates, tolls, maximum profits, and to supervise and regulate the operations of public mills within the state of Montana, such supervision, control and regulation to be in conformity with this act.

History: En. Sec. 2, Ch. 223, L. 1919; re-en. Sec. 3915, R. C. M. 1921.

Collateral References

Food 2; Manufactures 2. 36A C.J.S. Food § 3; 55 C.J.S. Manufactures § 5.

70-203. (3916) Seal—secretary of commission. The commission shall provide itself with a seal which shall be judicially noticed, and by which its official acts shall be authenticated in all cases where a seal is required; and in the name of the commission, as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the Montana trade commission shall be kept entirely separate from that of the board of railroad commissioners.

History: En. Sec. 3, Ch. 223, L. 1919; re-en. Sec. 3916, R. C. M. 1921.

NOTE.—Since the 1943 amendment of section 70-201 the secretary of the railroad commission has not acted as secretary of the Montana trade commission.

(3917) "Public mills" defined. The term "public mills," within the meaning of this act, shall be construed to mean and embrace all persons, copartnerships, associations, or corporations, their lessees, trustees, or receivers appointed by any court whatsoever, who now or may hereafter own, operate, manage, or control any elevator, mill, factory, or plant or equipment, or any part of a mill or equipment, within the state of Montana, whether operated by steam, electricity, water power, or any other motive power, or any elevator used in connection therewith, or any kind of equipment used or necessary in the business of milling, manufacturing, or producing flour, bran, mill feed, or products or commodities of any kind, from wheat, oats, or other grain, and who also is engaged in the business of purchase of wheat and other grain in the open market, and manufacturing same into flour, feed, or other grain products, and selling the same in open markets, and manufacturing flour, feed, or other grain products for farmers and other customers for toll or pay. And the commission is hereby invested with full power of supervision, regulation, and control of such public mills, subject to the provisions of this act.

History: En. Sec. 4, Ch. 223, L. 1919; re-en. Sec. 3917, R. C. M. 1921.

Collateral References 58 C.J.S. Mills §§ 1, 2.

70-205. (3918) Wheat and other grains to be milled on basis of toll fixed by commission. Every such public mill shall grind and bolt into flour and its equivalent mill products wheat of milling quality when offered by the owner thereof, on a basis of toll to be fixed by the commission; and every such public mill shall grind and chop grains other than wheat when offered by the owner thereof, on a basis of toll to be fixed by the commission; provided, that such mill shall be permitted to return to the person offering such grain for grinding and bolting, or for grinding and chopping, the equivalent value of such grain in flour or other mill products, less the toll in kind allowed to be taken by the commission.

History: En. Sec. 5, Ch. 223, L. 1919; re-en. Sec. 3918, R. C. M. 1921.

70-206. (3919) Term "public mills" does not include privately owned mills. The term "public mills," as used in this act, shall not be construed to mean and embrace privately owned mills.

History: En. Sec. 6, Ch. 223, L. 1919; re-en. Sec. 3919, R. C. M. 1921.

Collateral References
Manufactures©2.
55 C.J.S. Manufactures § 5.

70-207. (3920) "Privately owned mill or mills" defined. The term "privately owned mill or mills," as used in this act, shall be construed to mean any such mill, owned, operated, or used by any person, persons, corporation, or copartnership, for the purpose of grinding or manufacturing his or its grain for his or its own use or consumption.

History: En. Sec. 7, Ch. 223, L. 1919; re-en. Sec. 3920, R. C. M. 1921.

70-208. (3921) "Corporation" defined. The term "corporation," as used in this act, shall be construed to mean and embrace any company or association, incorporated or unincorporated, which is engaged in this state in the business of milling, manufacturing, and producing flour, bran, mill feed, or products or commodities of any kind, from wheat, oats, or other grain.

History: En. Sec. 8, Ch. 223, L. 1919; re-en. Sec. 3921, R. C. M. 1921.

70-209. (3922) Commission may prescribe rules of procedure—want of judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, or corporation the right to test, in court of competent jurisdiction, the legality or reasonableness of any fixed rule or order, made by the commission in the exercise of its duties or powers.

History: En. Sec. 9, Ch. 223, L. 1919; re-en. Sec. 3922, R. C. M. 1921.

Collateral References
Manufactures 2.
55 C.J.S. Manufactures § 5.

70-210. (3923) Public mills must furnish adequate service and facilities—reasonableness of tolls. Every such "public mill" which comes within the provisions of this act is required to furnish reasonably adequate service and facilities. The charge of toll made by any such public mill for the grinding, chopping, bolting, rolling, preparation, or manufacture of flour, feed, bran, rolled oats, cereals, breakfast foods, or other mill stuffs or grain products of every kind and nature, or for any service to be rendered to or in connection with any such mill, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 10, Ch. 223, L. 1919; re-en. Sec. 3923, R. C. M. 1921.

70-211. (3924) Mill may charge a reasonable profit. Every such mill coming within the provisions of this act, the selling or disposing of any of its flour, feed, or other mill stuffs or grain products, shall charge a reason-

able profit in addition to the actual cost of its products in the sale thereof to other persons, corporations, or associations.

History: En. Sec. 11, Ch. 223, L. 1919; re-en. Sec. 3924, R. C. M. 1921.

70-212. (3925) Valuation of plants. The commission may, in its discretion, investigate and ascertain the value of the property of every such "public mill" coming within the provisions of this act, actually used and useful in the milling, manufacture, sale, or production of such grain or grain products. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 12, Ch. 223, L. 1919; re-en. Sec. 3925, R. C. M. 1921.

70-213. (3926) Uniform accounts to be rendered commission. Every public mill, coming within the provisions of this act shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

History: En. Sec. 13, Ch. 223, L. 1919; re-en. Sec. 3926, R. C. M. 1921.

70-214. (3927) "Documentary evidence" defined. The term "documentary evidence," as used in this act, shall be construed to mean all documents, papers, and correspondence in existence at and after the passage of this act.

History: En. Sec. 14, Ch. 223, L. 1919; re-en. Sec. 3927, R. C. M. 1921.

70-215. (3928) Copies of documentary evidence—subponea of witnesses—subpoena duces tecum. For the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person or corporation, coming under the provisions of this act, being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

History: En. Sec. 15, Ch. 223, L. 1919; re-en. Sec. 3928, R. C. M. 1921.

70-216. (3929) Depositions. The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission, and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be

subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

History: En. Sec. 16, Ch. 223, L. 1919; re-en. Sec. 3929, R. C. M. 1921.

26A C.J.S. Depositions § 15. 23 Am. Jur. 2d 357, Depositions and Discovery, § 3.

Collateral References Depositions 5.

70-217. (3930) Owner or occupant accountable for grain. The owner or occupant of every mill is accountable for the safekeeping of all grain received in the mill for the purpose of being ground therein, and must deliver the same when ground, or ground and bolted, with the bags or sacks which were delivered in the mill with the grain, to the owner when called for. The bags or sacks must be distinctly marked with the initials or surname of the owner. But the owner or occupant of any mill must not be charged with or made accountable for the loss of any grain, bags, or sacks which may happen by robbery, fire, or other accident, without the fault or neglect of such owner or occupant, or his employee.

History: En. Sec. 2, p. 72, L. 1879; re-en. Sec. 1203, 5th Div. Rev. Stat. 1879; re-en. Sec. 2009, 5th Div. Comp. Stat. 1887;

re-en. Sec. 3271, Pol. C. 1895; re-en. Sec. 2093, Rev. C. 1907; re-en. Sec. 3930, R. C. M. 1921.

70-218. (3931) Penalty. If the owner or accupant, or his employee, takes a greater proportionate quantity of toll than authorized, he is guilty of larceny, and is punishable as provided in the Penal Code.

History: En. Sec. 3272, Pol. C. 1895; re-en. Sec. 2094, Rev. C. 1907; re-en. Sec. 3931, R. C. M. 1921.

Cross-References

Punishment of grand larceny, sec. 94-2706.

Punishment of petit larceny, sec. 94-2707.

70-219. (3932) Right of entry upon premises. The commission, its agents, experts, or examiners, shall have the right, authority, and power to enter upon any premises occupied by any public mill coming within the provisions of this act, for the purpose of making the examination, investigation, and tests, from time to time, as the commission may deem necessary, and to set up and use on such premises any appurtenances and appliances, and occupy reasonable space therefor.

History: En. Sec. 17, Ch. 223, L. 1919; re-en. Sec. 3932, R. C. M. 1921.

70-220. (3933) Schedule of rates, tolls and charges. Every public mill coming within the provisions of this act shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, charges, and prices which are established, and which are in force at the time, for any service performed, or maximum charges or prices for its products.

History: En. Sec. 18, Ch. 223, L. 1919; re-en. Sec. 3933, R. C. M. 1921.

70-221. (3934) Rules and regulations for investigations, etc.—rules of procedure. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and regulate the mode and manner of all investigations and hearings of such public mills coming within the provisions of this act. All hearings shall be open to the public.

History: En. Sec. 19, Ch. 223, L. 1919; re-en. Sec. 3934, R. C. M. 1921.

70-222. (3935) Right to inquire into management of business. The commission shall have power and authority to inquire into the management of the business of all public mills coming within the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any such industry all necessary information to enable the commission to perform its duties.

History: En. Sec. 20, Ch. 223, L. 1919; re-en. Sec. 3935, R. C. M. 1921.

70-223. (3936) Power to compel production of documentary evidence. The commission may require, by order or subpoena, to be served on any person or corporation coming within the provisions of this act, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any documentary evidence, books, accounts, papers, or records kept by such person or corporation in any office or place within or without the state of Montana, or verified or certified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction.

History: En. Sec. 21, Ch. 223, L. 1919; re-en. Sec. 3936, R. C. M. 1921.

Cross-Reference
Service of process, M. R. Civ. P., Rule

70-224. (3937) Jurisdiction of district court to enforce obedience to process. Any district court of the state of Montana, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

History: En. Sec. 22, Ch. 223, L. 1919; re-en. Sec. 3937, R. C. M. 1921.

Cross-Reference Contempt, sec. 93-9801 et seq.

70-225. (3938) Employment of accountant and other help. The commission is authorized to employ an accountant, at a salary of not to exceed three thousand dollars per annum, also examiners, experts, clerks, and accountants or other assistants, as it may be deemed necessary, at such rates of compensation as may be determined upon.

History: En. Sec. 23, Ch. 223, L. 1919; re-en. Sec. 3938, R. C. M. 1921.

Collateral References States 53. 81 C.J.S. States § 70.

70-226. (3939) Investigation of complaints. Upon a complaint made against any such person or corporation by any mercantile, labor, or agricultural organization, society, or club, or by any person or persons, firm or firms, corporation or corporations, who are directly affected thereby, that any of the rates, tolls, charges, or schedule of maximum profits are in any way unreasonable or unjustly discriminatory, or that any regulations, measures, practices, or acts whatsoever, affecting or relating to the production, manufacture, or preparation or sale of such mill stuffs or grain products, are in any respect unreasonable or insufficient, or that any service in connection therewith is inadequate, the commission shall proceed, with or without notice, to make such investigations as it may deem necessary and proper.

History: En. Sec. 24, Ch. 223, L. 1919; re-en. Sec. 3939, R. C. M. 1921.

70-227. (3940) Notice of hearing—rights of parties—witness fees and mileage. The commission shall give such persons or corporations and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and such persons or corporations shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of documentary evidence, books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the district courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid, but no fees for mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 25, Ch. 223, L. 1919; Cross-Reference re-en. Sec. 3940, R. C. M. 1921. Witness fees and mileage, sec. 25-404.

70-228. (3941) Power of commission in disposing of complaints. If, upon such hearing and due investigations, the rates, tolls, charges, or profits shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential, or otherwise in violation of the provisions of this act, the commission shall have the power to fix an order substituting therefor such maximum rate or rates, tolls, charges, or schedule of profits as shall be just and reasonable.

History: En. Sec. 26, Ch. 223, L. 1919; re-en. Sec. 3941, R. C. M. 1921.

70-229. (3942) Complaints by persons or corporations concerning their own products—notice of hearing—record of proceedings. Any person or corporation coming within the provisions of this act may make complaint as to any matter affecting its own product or service, with like effect as though

made by any mercantile, agricultural, or labor organization, and the person or persons affected thereby. Notice of the hearing upon any such complaint shall be given to the persons interested in such matter as the commission may by rule prescribe. A full and complete record shall be kept of all proceedings before the commission, or its representatives, on any formal investigation, and all testimony shall be taken down by a stenographer appointed by the commission.

History: En. Sec. 27, Ch. 223, L. 1919; re-en. Sec. 3942, R. C. M. 1921.

70-230. (3943) Proceedings for the enforcement of law. The commission shall inquire into any neglect or violation of the laws of this state, by any such persons or corporations coming within the provisions of this act, and doing business in the state of Montana, or by the officers, agents, or employees thereof, shall have the power and it shall be its duty to enforce the provisions of this act and report all violations thereof to the attorney general. Upon the request of the commission, it shall be the duty of the attorney general, or the prosecuting attorney of the proper county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 28, Ch. 223, L. 1919; re-en. Sec. 3943, R. C. M. 1921.

70-231. (3944) Recovery of penalties and forfeitures. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney general of the state of Montana shall be the counsel in any proceeding, investigation, hearing, or trial, prosecuted or defended by the commission, as also shall any county attorney selected by said commission in any county where such action is pending.

History: En. Sec. 29, Ch. 223, L. 1919; re-en. Sec. 3944, R. C. M. 1921.

70-232. (3945) Penalty for violation of law or failure to comply with order. If any person or corporation coming within the provisions of this act shall violate any provisions of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any such person or corporation to place in operation any rate, toll, or profit, or do any act herein prohibited, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such person or corporation shall be subject to a fine of not less than one hundred dollars nor more than five thousand dollars.

History: En. Sec. 30, Ch. 223, L. 1919; re-en. Sec. 3945, R. C. M. 1921.

70-233. (3946) Traveling expenses of commission. The commission and secretary and such clerks and experts as may be employed shall be entitled

to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 31, Ch. 223, L. 1919; re-en. Sec. 3946, R. C. M. 1921.

CHAPTER 3

TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT AND POWER LINES

Section 70-301. Rights of way for pole lines along streets, roads and highways.

70-302. Construction and connection.

70-303. Consolidation of competing lines forbidden.

70-301. (6645) Rights of way for pole lines along streets, roads and highways. A telegraph, telephone, electric light, or electric power line, corporation, or public body or any other person owning or operating such, is hereby authorized to install its respective plants and appliances necessary for service, and to supply and distribute electricity for lighting, heating, power, and other purposes, and to that end to construct such telegraph, telephone, electric light or electric power line or power lines, from point to point, along and upon any of the public roads, streets, and highways in the state of Montana, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways, and nothing herein shall be so construed as to restrict the powers of city or town councils.

History: Ap. p. Sec. 1000, Civ. C. 1895; amd. Sec. 1, Ch. 55, L. 1905; amd. Sec. 1, Ch. 192, L. 1907; re-en. Sec. 4400, Rev. C. 1907; re-en. Sec. 6645, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1945.

Cross-References

Bribing telegraph operators, sec. 94-35-

Disclosing or altering telegram, penalty, secs. 94-3321 to 94-3323.

Duty to deliver message, sec. 8-418. Employee using information, penalty, sec. 94-35-219.

Forgery of message, sec. 94-2005.

Malicious injury to telegraphs or telephones, sec. 94-3203.

Neglect or postponement of delivery, sec. 94-35-218.

Order of delivery, sec. 8-820.

Secretly learning contents of message, penalty, sec. 94-35-220.

Taxation of telegraph companies, secs. 84-901 to 84-907.

Telegraph companies, license tax, secs. 84-2501 to 84-2508.

Telephone companies, license tax, secs. 84-2601 to 84-2608.

Electric Lines

Electric co-operative could not enjoin competing power company from extending power lines to residents previously served by co-operative on basis that it acquired certain rights to serve customers after having set out on expensive program of erection and operation of distribution lines to customers in question. Yellowstone Valley Elec. Co-op., Inc. v. Montana Power Co., 150 M 519, 437 P 2d 5.

Operation and Effect

A telephone company is not a trespasser on a highway nor negligent per se in maintaining a guy wire on a portion of it not intended for travel, this section giving to such company the right to construct its lines along the highways, provided the traveling public is not endangered or inconvenienced thereby. Howard v. Flathead Independent Tel. Co., 49 M 197, 202, 141 P 153.

Last sentence of this section does not prohibit construction of power lines unless they are necessary. Yellowstone Valley Elec. Co-op., Inc. v. Montana Power Co., 150 M 519, 437 P 2d 5.

Collateral References

Electricity 9: Telecommunications

77-80, 103.

29 C.J.S. Electricity § 16; 86 C.J.S. Telegraphs, Telephones, Radio, and Television

39 Am. Jur. 2d 645-650, Highways, Streets, and Bridges, §§ 258-262; 52 Am. Jur. 57 et seq., 80-84, Telegraphs and Telephones, §§ 28 et seq., 49-51.

Regulations or provisions upon requiring physical connection of telephone lines. 16 ALR 352.

Stringing telephone wires across rail-road right of way. 18 ALR 619.

Right and duty of telephone companies to make or discontinue physical connection

landowner. 6 ALR 2d 208.

of exchanges or lines. 76 ALR 953.

Rights in right of way for telephone, telegraph or electric power line as against

Lightning transmitted on wires, liability of electric power or telephone company

for injury or damage by. 25 ALR 2d 722.
Airplane: liability of owner of wires, poles or structures struck by airplane for resulting injury or damage. 48 ALR 2d

Electric light or power line in street or highway as additional servitude. 58 ALR 2d 525.

Pole, liability of electric power company for personal injury or death from fall of. 97 ALR 2d 664.

Electric generating plant or transformer station as nuisance. 4 ALR 3d 902.

Trespasser: status of injured adult as trespasser on land not owned by electricity supplier, as affecting its liability for injuries inflicted upon him by electric wires it maintains thereon. 30 ALR 3d 777.

70-302. (6646) Construction and connection. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines, and in case such persons or corporations cannot agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under Title 93, and the damages assessed and the right of connection granted as provided in Title 93.

History: En. Sec. 1001, Civ. C. 1895; re-en. Sec. 4401, Rev. C. 1907; re-en. Sec. 6646, R. C. M. 1921.

Collateral References

Eminent Domain 36.

29A C.J.S. Eminent Domain § 44.

26 Am. Jur. 2d 711, 714, Eminent Domain, §§ 56, 58.

Regulations or provisions upon requiring physical connection of telephone lines. 16 ALR 352.

Stringing telephone wires across rail-road right of way. 18 ALR 619.

Right and duty of telephone companies to make or discontinue physical connection of exchanges or lines. 76 ALR 953.

70-303. (6647) Consolidation of competing lines forbidden. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph or telephone.

History: En. Sec. 1002, Civ. C. 1895; re-en. Sec. 4402, Rev. C. 1907; re-en. Sec. 6647, R. C. M. 1921.

Collateral References

Telecommunications \$\infty\$45.

86 C.J.S. Telegraphs, Telephones, Radio, and Television § 16.

CHAPTER 4

TELEVISION

Section 70-401. Purpose of act. 70-402. Definitions.

Definitions.

70-403. License required for operation of VHF booster or VHF translator system.

- 70-404.
- Application—contents.

 Issuance of license—fee—additional information. 70-405.
- 70-406. Rules and regulations.
- 70-407. Penalty for violation of act.
- 70-408. Television districts—purposes. 70-409. Organization of television districts authorized.
- 70-410. Areas includable in translator district.
- 70-411. Petition to form district—signatures—contents. 70-412. Filing of petition—certification and transmittal to county commissioners.

TELEVISION

- 70-413. Publication of petition—notice of meeting to consider petition—deposit for costs of publication.
- 70-414. Hearing on petition for district—adjournment—resolution creating district or denying petition.
 70-415. Naming of district—filing of order creating district.
 70-416. Appointment of trustees for district—qualifications—terms—vacancies.
 70-417.

- 70-417. Assessor to list television owners within about 70-418. Budget for district—levy and certification of tax.
- 70-419. Treasurer of district—separate fund—warrants for disbursements.
- 70-420. Powers of districts. 70-421. Trustees not compen Trustees not compensated—reimbursement of expenses.
- 70-422. Exemption of taxpayers who do not benefit from translator-affidavit.

- 70-423. Meetings of trustees.
 70-424. False claim for exemption.
 70-425. Abandonment of district—disposition of property and funds.
 70-426. Annexation of contiguous areas—petition—hearing—resolution.
- 70-401. Purpose of act. It is the purpose of this act to provide for the continuation of television service to all sectors of the state of Montana, particularly in those sparsely settled regions of this state that are unable to support their own television stations, through the authorization of the continued operation of VHF booster and VHF translator television broadcasting systems, and the authorization of the use of such booster and translator television broadcasting systems in those areas of this state where such systems do not now exist.

History: En. Sec. 1, Ch. 26, L. 1959.

Cross-Reference

Educational television, duties of superintendent of public instruction, secs. 75-5710, 75-5711.

Collateral References

Telecommunications 381, 389. 86 C.J.S. Telegraphs, Telephones, Radio, and Television § 316.

- 70-402. Definitions. For the purposes of this act, unless the context of any section requires otherwise;
- (a) "VHF booster system" or "booster television system" comprises electronic apparatus designed to receive, amplify and retransmit television signals on a single VHF television channel;
- "VHF translator system" or "translator television system" comprises electronic apparatus designed to receive, amplify and retransmit television signals on a VHF television channel different from that received:
- "VHF" or "very high frequency" comprises the radio frequency (e) range between 30,000 kc and 300 mc;
- (d) "VHF channel" or "very high frequency channel" comprises the following television channels with the following transmission frequency:

	Frequency band
Channel No.	(Megacycles)
2	54 - 60
3	60 - 66
4	66 - 72
5	76 - 82
6	82 - 88
7	174 - 180
8	180 - 186
9	186 - 192
10	192 - 198
11	198 - 204
12	204 - 210
13	210 - 216

- (e) "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation.
- (f) "Commission" means the public service commission of the state of Montana, as presently constituted.

History: En. Sec. 2, Ch. 26, L. 1959.

70-403. License required for operation of VHF booster or VHF translator system. No person shall operate a VHF booster system or booster television system, or a VHF translator system or translator television system within the boundaries of this state except under and in accordance with a license issued under the authority of the Montana public service commission, upon application therefor.

History: En. Sec. 3, Ch. 26, L. 1959.

Collateral References

Licensing and control of telecast facilities. 15 ALR 2d 788.

70-404. Application—contents. Such application shall be directed to said commission and shall contain information concerning the ownership and location of said system, the type of system, the VHF channel or channels being utilized and the area of estimated coverage of said system, together with such other information both technical and nontechnical which the commission by its regulations shall require. It must appear from said application that the use or operation of such system will not cause to be transmitted any energy, communication or signal from this state to any other state, territory or possession of the United States, or to any place in any foreign country or to any vessel; or that the effects of such transmission extend beyond the boundaries of this state; or when interference is caused by such use or operation with the transmission of energy, communications, or signals from within this state to any place beyond its borders, or from any place beyond the borders of this state to any place within this state, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of this state.

History: En. Sec. 4, Ch. 26, L. 1959.

70-405. Issuance of license—fee—additional information. Upon receipt of an application which conforms to the requirements of the preceding section, and all regulations of the commission adopted pursuant thereto, the commission shall forthwith issue to the applicant a license, in a form to be prescribed by the commission, which shall authorize the continued operation of said system for a period of one (1) year thereafter. The fee for such license shall be in the amount of one dollar (\$1.00) per year. In the event that such application is for the construction or operation of a VHF booster system or VHF translator system which was not on the effective date of this act in operation within the boundaries of this state, the commission may require additional information with regard to the necessity for and convenience of such system and conduct such investigations and hearings as are deemed necessary to determine whether authorization of said system should be granted.

History: En. Sec. 5, Ch. 26, L. 1959.

Compiler's Note

The effective date of this act was February 17, 1959.

70-406. Rules and regulations. The commission shall have the authority to adopt such rules and regulations, not inconsistent with law as it may deem necessary to carry out the provisions of this act.

History: En. Sec. 6, Ch. 26, L. 1959.

70-407. Penalty for violation of act. Any violation of the terms of this act shall constitute a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00).

History: En. Sec. 7, Ch. 26, L. 1959.

70-408. Television districts—purposes. The purposes of a television district shall be to serve the public interest, convenience, and necessity in the construction, maintenance and operation of television translator stations and any system necessary thereto by appropriate electric or electronic means for television program distribution, but said purposes are not meant to include the construction or operation of community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 1, Ch. 198, L. 1961.

70-409. Organization of television districts authorized. Any area of the state may organize as a television district for the performance of functions provided for in this act.

History: En. Sec. 2, Ch. 198, L. 1961.

70-410. Areas includable in translator district. A television translator district may include a part or all of any county or may include areas in more than one county and may include any municipality located within such county or counties.

History: En. Sec. 3, Ch. 198, L. 1961.

70-411. Petition to form district—signatures—contents. A petition to form a district shall be presented to the county clerk and recorder of each

of the counties in which any portion of the area is situated. Petitions shall be signed by owners of television sets within the proposed district, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets within the proposed district. The petition shall state the objects of the district and designate the boundaries thereof by section, the approximate number of people to be benefited thereby and shall contain a brief description of the proposed system including type of construction, location, approximate cost of the installation. It shall also state that the proposed district will be conducive to the public interest, convenience and necessity. It shall request that it be organized as a television district.

History: En. Sec. 4, Ch. 198, L. 1961.

70-412. Filing of petition—certification and transmittal to county commissioners. Such petition shall be filed with the county clerk and recorder of all counties in which the signers on the petition are located. If the petition is filed with more than one county clerk and recorder each petition shall state the number of signers on it and the name of the county where the petition containing the most signers is filed. Upon the filing of such petition or petitions the county clerk and recorder shall examine the petition and certify whether the required number of signers are found thereon and after the examination of the petition the county clerk and recorder of any county containing the least number of signers, if more than one county is involved, shall transmit the petition to the county clerk and recorder of the county containing the most signers. Within thirty (30) days following the receipt of such petitions the county clerk and recorder in the county containing the most names on the petitions shall transmit the petitions to the board of county commissioners of the county in which the greater number of petitioners reside together with his certificate and the certificates of any other county clerk and recorder as to the sufficiency thereof.

History: En. Sec. 5, Ch. 198, L. 1961.

70-413. Publication of petition—notice of meeting to consider petition—deposit for costs of publication. Upon receipt of a duly certified petition the board of county commissioners shall cause the text of the petition to be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation within the county where the petition is presented. If any portion of the proposed district lies in another county the petition and notice shall likewise be published in that county. No more than five (5) names attached to the petition shall appear in the publication and notice but the number of signatures shall be stated. With the publication of the petition there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered stating that all persons interested may appear and be heard.

At the time of filing the petition the sponsors thereof shall cause to be deposited with the county clerk and recorder a sufficient sum of money to cover the cost of publication of all said notices. If the notices are not published the deposit shall be returned to whomsoever deposited the funds and if there is any surplus remaining after paying for such publication as herein provided it shall be returned to the original depositor or depositors and if a district is created the fees so expended are an obligation of the district and shall be repaid by the district to the depositors.

History: En. Sec. 6, Ch. 198, L. 1961.

70-414. Hearing on petition for district—adjournment—resolution creating district or denying petition. At the time set for hearing such petition or petitions the board of county commissioners shall hear all persons who desire to be heard relative to the creation of a television district. The board of county commissioners may, if they so desire and it appears to be desirable, adjourn the meeting for not to exceed thirty (30) days in time to further hear the petitioners and protestants, if any. After such hearing or hearings the board of county commissioners shall adopt a resolution either creating the proposed television district or denying the petition. If the board of county commissioners desires to create the television district they shall adopt a resolution describing the proposed system and describing the boundaries of such district, including type of construction, location, type and approximate cost of any installation to be made and finding that the district will be conducive to the public interest and convenience and thereby such district shall be created.

History: En. Sec. 7, Ch. 198, L. 1961.

70-415. Naming of district—filing of order creating district. If the board of county commissioners passes a resolution creating such district they shall name the district television district and file a copy of the order creating such district, if only one county is included therein, with the county clerk and recorder for which the county clerk and recorder shall receive a fee of three dollars (\$3.00) and if portions of more than one county are included in said district a copy of the order shall be filed in each county and also with the secretary of state for which he shall receive a fee of five dollars (\$5.00).

History: En. Sec. 8, Ch. 198, L. 1961.

70-416. Appointment of trustees for district—qualifications—terms—vacancies. The board of county commissioners, upon the creation of said district, and as a part of the order creating the district, shall appoint a board of three trustees to administer the affairs of the district. Each of said trustees shall be a resident and owner of a television set from within the district. The trustees so appointed upon creation of such district shall be appointed for staggered terms of one (1), two (2) and three (3) years; and if more than one county is involved, one of said trustees shall be appointed from the county having the least number of television sets that will be benefited by such district, and such trustee shall be given the three (3) year term; said trustees so appointed shall hold office for the term of their respective appointment or until his successor is appointed and qualified; at the end of the respective terms of said trustees, the then board of county commissioners shall appoint a new trustee for a three (3) year term, and in case of a vacancy by death, resignation, removal from the

district or otherwise a trustee shall be appointed by the board of county commissioners to fill such vacancy to the end of the term of such trustee.

History: En. Sec. 9, Ch. 198, L. 1961.

70-417. Assessor to list television owners within district. A copy of the order creating the district shall be delivered to the county assessor of each county within the district and he shall, on or before the first (1st) day of August of any given year, prepare and certify a list of all persons owning television sets within such district and deliver a copy of such list to the board of trustees of said district.

History: En. Sec. 10, Ch. 198, L. 1961.

70-418. Budget for district—levy and certification of tax. The board of trustees shall, from said list so prepared by the county assessor, remove therefrom the names of any persons who have claimed exemption under this act and shall prepare a budget for the expenses for the next year, which budget together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this act shall be presented by September 1 to the board of county commissioners who shall levy the tax requested by said trustees; provided however, said tax shall not exceed the sum of fifteen dollars (\$15.00) per annum, per person owning a television set and the board of county commissioners shall levy such tax in accordance with the request herein mentioned, which said tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

History: En. Sec. 11, Ch. 198, L. 1961.

70-419. Treasurer of district—separate fund—warrants for disbursements. The county treasurer shall be the treasurer for said district and hold said taxes as collected in a separate fund to be disbursed by him upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of such funds by the county treasurer.

History: En. Sec. 12, Ch. 198, L. 1961.

70-420. Powers of districts. A television district organized under this act, acting through its board of trustees herein provided for, may: (1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, but may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems; such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein but discontinuance of serv-

ice by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative; (2) if necessary or proper in the furtherance of the objects of this act, acquire, build, construct, repair, own, maintain and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pick-up stations, or any other electrical or electronic system necessary; (3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this act; (4) make contracts with the United States, or any state, municipality or any department or agency of those entities for carrying out the general purposes for which the district is formed; (5) acquire by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights of way and easements, necessary or convenient for its purposes; (6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits), employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this act; (7) issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board not to exceed five per cent (5%) per year payable annually or semiannually as the board may prescribe; (8) contract indebtedness or borrow money for corporate purposes, and may issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding six per cent (6%) per annum, payable semiannually, the bonds not to be sold for less than par and accrued interest; (9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this act; and (10) prescribe such installation or ready to serve charges to be used for any costs connected with preparation, acquisition, or construction of the system; (11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law.

History: En. Sec. 13, Ch. 198, L. 1961.

70-421. Trustees not compensated—reimbursement of expenses. The board of trustees of the district shall serve without compensation but will be reimbursed for reasonable expenses incurred in the operation of the television district.

History: En. Sec. 14, Ch. 198, L. 1961.

70-422. Exemption of taxpayers who do not benefit from translator—affidavit. The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the television district provided they file an affidavit setting forth any of the grounds above mentioned, which affidavit shall be filed with the board of trustees who shall upon the receipt of such affidavit have the names of such persons so ex-

empted from the tax stricken from the list of taxpayers certified to the board of county commissioners and shall not be liable for such tax.

History: En. Sec. 15, Ch. 198, L. 1961.

70-423. Meetings of trustees. The board of trustees shall meet once a month at a regular time and place to transact the business of the district, the time and place to be fixed by the trustees and any change in the time and place of meetings must be given by publication of notice in a newspaper most likely to give notice to the taxpayers within such district. All such meetings shall be open in their entirety to the public and all meetings shall be held at some place within the area of the television district.

History: En. Sec. 16, Ch. 198, L. 1961.

70-424. False claim for exemption. Any person or persons who shall make a false or fraudulent claim for exemption as provided in this act shall be guilty of a misdemeanor.

History: En. Sec. 17, Ch. 198, L. 1961.

70-425. Abandonment of district—disposition of property and funds. If at any time a petition for abandonment of the television district, signed by owners of television sets within the district, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets, is filed with the board of trustees, the board of trustees shall forthwith notify the board or boards of county commissioners which created the district, and such board or boards of county commissioners shall by resolution immediately declare the district abandoned. All properties and moneys remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general fund of the county; and if the abandoned district embraced areas in more than one county, properties and moneys remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general funds of such counties in proportion to the number of television sets in each county which were served by the district.

History: En. Sec. 18, Ch. 198, L. 1961.

- 70-426. Annexation of contiguous areas—petition—hearing—resolution. The boundaries of a television district created by authority of chapter 4 of Title 70 may be altered and outlying areas be annexed from territory contiguous thereto in the following manner;
- (a) A petition shall be signed by owners of television sets within the proposed area, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets within the area to be annexed;
- (b) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district;

- (c) The petition shall be transmitted to the clerk and recorder and the hearing and notice thereof shall be the same as provided by sections 70-412 through 70-414:
- After the hearing the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

History: En. Sec. 1, Ch. 48, L. 1963.

CHAPTER 5

ELECTRIC SUPPLIERS' TERRITORIAL INTEGRITY

Section 70-501. Short title. 70-502. Definitions.

70-503. Rights and restrictions of electric suppliers in outlying areas—settlement of controversy.

Service in premises under another supplier-written agreement.

70-505. Rights and restrictions in annexed areas.

70-506. Jurisdiction of district courts over disputes.
70-507. Remedies of supplier for violations by another—judicial procedure. 70-507. Remedies of supplier for 70-508. Prospective application.

70-501. Short title. This act shall be known and may be cited as the "Territorial Integrity Act of 1971."

History: En. Sec. 1, Ch. 7, L. 1971.

70-502. Definitions. When used in this act:

- (1) The term "electric supplier" means any electrical utility and any electric co-operative.
- The term "electric utility" means a person, firm or corporation other than an electric co-operative which furnishes electrical service to the public.
- The term "electric co-operative" means a rural electric co-operative organized under chapter 5 of Title 14, or a foreign corporation admitted thereunder to do business in Montana.
- The term "premises" means a building, residence, structure, or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for farming, business, commercial, industrial, institutional, governmental or trailer court purposes, shall together constitute one premises, except that any such building, structure or facility other than a trailer court shall not, together with any other building, structure or facility, constitute one premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure or facility.
- The term "line" means any electric conductor operating at a nominal voltage level of sixty-nine thousand (69,000) volts or less, measured phase-to-phase.
- The term "commercial premises" means the premises where the business of selling, warehousing or distributing a commodity, or other

business activity is carried on, or professional or other services are rendered.

(7) The term "industrial premises" means the premises where an industrial activity is carried on, including, but not limited to, the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating or processing activities.

History: En. Sec. 2, Ch. 7, L. 1971.

- 70-503. Rights and restrictions of electric suppliers in outlying areas—settlement of controversy. With respect to service in all areas outside the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto, and every incorporated municipality in which ninety-five per cent (95%) or more of the premises are served by an electric co-operative on the effective date of the Territorial Integrity Act of 1971, electric suppliers shall have rights and be subject to restrictions as follows:
- (1) Every electric supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the effective date of this act.
- (2)(a) Subject to subsection (3) the electric supplier having a line nearest the premises, as measured in accordance with subsection (2) (b), shall serve premises initially requiring service after the effective date of this act.
- (b) All measurements under this act shall be made on the shortest straight line which can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises. Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises.
- (3) An electric utility shall have the right to furnish electric service to any industrial or commercial premises if the estimated connected load for full plant operation at such industrial or commercial premises will be 400 kilowatts or larger within two (2) years from the date of initial service, provided however such electric utility can extend its lines to such industrial or commercial premises at less cost to the electric utility, or the industrial or commercial customer, than the electric co-operative cost. An independent consultant engineer agreeable to both electric suppliers, or in the event of failure of the electric suppliers to agree on a consultant engineer then by an independent consultant engineer selected by the district court having jurisdiction as provided in section 70-506 shall determine which electric supplier can extend its lines to the consumer at the least costs. The costs of such engineering services shall be paid equally by the electric suppliers involved. No premises other than another such commercial or industrial premises shall be served from a line constructed under

this section. The fact that actual connected load after two (2) years from the date of initial service exceeds or fails to equal 400 kilowatts shall not affect the right of the electric supplier initially providing service to continue service to such premises. The estimated connected load shall be determined from the plans and specifications prepared for construction of the premises or, if such estimate is not available, shall be determined by agreement of the electric supplier and the customer.

(4) Nothing in this section shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier.

History: En. Sec. 3, Ch. 7, L. 1971.

Compiler's Notes

Chapter 172 of Laws 1939 is compiled as sections 14-501 to 14-522, 14-524 to 14-531.

The effective date of this act was February 1, 1971.

Collateral References

Electricity 5.
29 C.J.S. Electricity § 13.

26 Am. Jur. 2d 234-239, Electricity, Gas, and Steam, §§ 27-31.

Competition: right of public utility not having an exclusive franchise to protection against, or damages for, interference with its operations, property, or plant by a competitor. 119 ALR 432.

a competitor, 119 ALR 432.

Division of territory: validity of contract between public utilities other than carriers dividing territory and customers. 70 ALR 2d 1326.

70-504. Service in premises under another supplier—written agreement. Notwithstanding the provisions of section 70-503, any electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers, or at premises which another electric supplier has the right to serve pursuant to this act, upon written agreement of the affected electric suppliers.

History: En. Sec. 4, Ch. 7, L. 1971.

Electric Lines

Electric co-operative could not enjoin competing power company from extending power lines to residents previously served by co-operative on basis that it acquired certain rights to serve customers after having set out on expensive program of erection and operation of distribution lines to customers in question. Yellowstone Valley Elec. Co-op., Inc. v. Montana Power Co., 150 M 519, 437 P 2d 5, decided before enactment of Territorial Integrity Act.

- 70-505. Rights and restrictions in annexed areas. With respect to service in areas which are annexed to incorporated municipalities having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto, electric suppliers shall have rights and be subject to restrictions as follows:
- (1) Every electric supplier shall have the right to serve all premises being served by it on the date of annexation.
- (2) An electric co-operative shall not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which ninety-five per cent (95%) or more of the premises are served by an electric co-operative on the effective date of this act.

History: En. Sec. 5, Ch. 7, L. 1971.

as sections 14-501 to 14-522, 14-524 to

Compiler's Notes

Chapter 172 of Laws 1939 is compiled ruary 1, 1971.

The effective date of this act was February 1 1971

70-506. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises or lines involved in any dispute are located shall have jurisdiction under this act over all electric suppliers subject to the provisions thereof.

History: En. Sec. 6, Ch. 7, L. 1971.

70-507. Remedies of supplier for violations by another—judicial procedure. Whenever it shall appear that any electric supplier is failing or omitting, or about to fail or omit, to do anything required of it by this act, or is doing, or is about to do anything or to permit anything to be done contrary to or in violation of this act, any electric supplier affected thereby shall have the right to file a complaint in the district court briefly setting forth the acts or omissions complained of and requesting an injunction. If an affidavit showing that grounds exist therefor is filed with the complaint, a temporary restraining order shall be issued without notice. A copy of the temporary restraining order, complaint and affidavit shall be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within five (5) days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified therein, which shall not be more than ten (10) days after service thereof, and shall take precedence over all matters pending before the district court.

A judgment making the injunction permanent or dissolving the temporary restraining order theretofore issued and dismissing the complaint must be made not later than ten (10) days after the hearing on the order to show cause.

Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within twenty (20) days from entry of the order. The appeal must be perfected within twenty (20) days thereafter and shall take precedence over all matters pending before the supreme court of Montana.

History: En. Sec. 7, Ch. 7, L. 1971.

70-508. Prospective application. Nothing in this act shall be construed to prevent:

- (1) the completion of lines under actual construction on the effective date of this act; or
- (2) the construction of lines to provide service under electric power supply contracts and electric service contracts entered into prior to the effective date of this act.

History: En. Sec. 8, Ch. 7, L. 1971.

Compiler's Note

The effective date of this act was February 1, 1971.

CHAPTER 6

UNDERGROUND CONVERSION OF UTILITIES LAW

Section 70-601. Short title. 70-602. Legislative purpose. 70-603. Definitions. Powers conferred. 70-604. 70-605. Basis of assessments. 70-606. Resolution for cost and feasibility study. Costs and feasibility report.
Resolution declaring intention to create district. 70-607. 70-608. 70-609. Contents of notice of resolution and hearing on protests. Notice of public hearing on proposed improvement. 70-610. Protests against proposed work and areas to be included in the district. 70-611: 70-612. Public hearing on creation of special improvement district. 70-613. Waiver of objections. 70-614. Proposed assessment list. 70-615. Proposed assessment ordinance. 70-616. Notice of public hearing on proposed assessments. 70-617. Public hearing on proposed assessment ordinance. 70-618. Adoption of the assessment ordinance. 70-619. Payment of assessment. Installment payments.
Collection of installments—failure to pay installments. 70-620. 70-621. 70-622. Assessment lien. .70-623. Advance payment of assessment installments. Issuance of bonds. 70-624. 70-625. Validity of assessments. 70-626. Conversion costs. 70-627. Maintenance, construction and title to converted racingles.
70-628. Statement of conversion costs—notice to landowners—removal of overhead facilities. Private property—conversion of facilities. Private property—conversion upon default of owner. 70-630. 70-631. Payment of public utility. 70-632. Reinstallation of overhead facilities not permitted. 70-633. No limitation of public service commission's jurisdiction. 70-634. Invalidity of one provision not to affect others—exception. Abatement of construction.

70-601. Short title. This act shall be known and cited as the "Underground Conversion of Utilities Law."

History: En. Sec. 1, Ch. 429, L. 1971.

Collateral References

Electricity 9; Telecommunications 107.

29 C.J.S. Electricity § 16; 86 C.J.S. Telegraphs, Telephones, Radio, and Television §§ 36, 38.
52 Am. Jur. 81, Telegraphs and Tele-

phones, § 50.

Legislative purpose. The legislature finds that in many areas of the state, landowners, cities, town, counties, rural electric co-operatives and public utilities desire to convert existing overhead electric and communication facilities to underground locations by means of special improvement district proceedings. The legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to this chapter, whether such areas be within the limits of a city or town or within a county.

History: En. Sec. 2, Ch. 429, L. 1971.

70-603. **Definitions.** As used in this chapter, the following words and phrases and any variations thereof shall have the following meaning:

"Communication service" means the transmission of intelligence by electrical means, including, but not limited to, telephone, telegraph, messenger-call, clock, police, fire alarm and traffic control circuits or the transmission of standard television or radio signals.

"Electrical service" means the distribution of electricity for heat, light or power.

"Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

"Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances. "Electric facilities" shall not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of twenty-five thousand (25,000) volts.

"Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

"Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground.

"Public utility" means any public or private person, corporation or cooperative that provides electric or communication service to the public by means of electric or communication facilities and shall include any special improvement district that provides electric or communication service to the public by means of electric or communication facilities.

"Governing body" means the board of county commissioners or city council, as may be appropriate, depending on whether the special improvement district is located in a county or within a city or town.

"Ordinance" means resolution where the governing body acts by resolution and vice versa.

History: En. Sec. 3, Ch. 429, L. 1971.

70-604. Powers conferred. The governing body of every county is hereby authorized and empowered to create special improvement districts under this chapter within the unincorporated portion of such county, and the governing body of every city and town is hereby authorized and empowered to create special improvement districts under this chapter within its territorial limits. Said special improvement districts shall provide for the conversion of existing overhead electrical and communication facilities to underground locations and the construction, reconstruction or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this chapter; provided, however, that any such special improvement district shall include an area having

a frontage of not less than one thousand (1,000) feet upon a public street, road, highway or utilities easement along which overhead electric or communication facilities are located.

History: En. Sec. 4, Ch. 429, L. 1971.

70-605. Basis of assessments. Whenever any improvement authorized to be made by any governing body by the terms of this chapter is ordered. the governing body shall provide for the apportionment of the cost and expenses thereof as in their judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous and adjacent lots and land and to the lots and lands otherwise benefited and included within the special improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet of such lands and lots abutting, adjoining, contiguous and adjacent thereto or included in the special improvement district, and in proportion to the benefits derived to such property by said improvements. The entire cost of the improvement may be assessed against the benefited property as herein provided, or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed, as herein provided for, shall include the cost of the improvement, engineering and clerical service, advertising, cost of inspection, cost of collecting assessments, cost of easements, and interest upon bonds, if issued, and for legal services for preparing proceedings and advising in regard thereto. Fee lands and property of the state or federal government shall not be considered as lands or property benefited by any improvement district and shall not be subject to assessment for the payment of any of the cost or expense of such improvement.

History: En. Sec. 5, Ch. 429, L. 1971.

70-606. Resolution for cost and feasibility study. Any governing body may, on its own initiative or upon a petition signed by at least sixty per cent (60%) of the property owners owning at least sixty per cent (60%)of the assessable land of any proposed district requesting the creation of a special improvement district, as provided for in this chapter, pass a resolution at any regular or special meeting declaring that it finds that the special improvement district is in the public interest. The governing body shall make a finding that the formation of the special improvement district, for the purposes set out in this chapter, will promote the public convenience, necessity and welfare. The resolution shall state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving such area by overhead electric or communication facilities shall, within one hundred twenty (120) days after the receipt of the resolution, make a study of the cost of conversion of its facilities in such area to underground service. The report of said study shall be provided to the governing body and made available for inspection in the office of the governing body and each public utility. The resolution of the governing body shall require that each public utility

be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and such other matters as may be required by the public utilities in order to perform the work involved in the cost study. The resolution shall further state the area in square feet of each lot or parcel within the proposed conversion service area.

History: En. Sec. 6, Ch. 429, L. 1971.

Costs and feasibility report. The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed in so far as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district. The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district, provided that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new cost and feasibility report from the public utility concerned on the basis of the amended district. Should a delay result in a significant increase of the estimated conversion costs, new hearings shall be held on the creation of the district. In the event an increase of ten per cent (10%) or less results from delay, only the hearing on the assessments need be held again.

History: En. Sec. 7, Ch. 429, L. 1971.

70-608. Resolution declaring intention to create district. On the filing with the clerk of any governing body of the cost and feasibility report by the public utility, as hereinbefore provided, and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a special improvement district. The resolution shall state that the costs and expenses of the district created are, except as otherwise provided for, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the special improvement district created; that it is the intention of the governing body to make such improvement which will promote public convenience, necessity and welfare; and shall further state the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and the intention of the governing body to hold a hearing on the proposed improvement.

History: En. Sec. 8, Ch. 429, L. 1971.

70-609. Contents of notice of resolution and hearing on protests. Following the passage of the resolution in section 70-608, the governing body shall cause notice of the resolution and a hearing on any protests to the proposed improvement to be given in the manner provided in section 70-610. Such notice shall: (1) Declare that the governing body has passed a resolution of intention to create a special improvement district. (2) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. (3) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district. (4) State the estimated cost as determined from the cost and feasibility report, and the estimated cost of engineering, clerical service, easements, advertising, inspection, collection of assessments, interest upon bonds, and legal services for preparing proceedings and advising in regard thereto, if applicable. (5) State that it is proposed to assess the real property in the district to pay all of the cost of the improvement according to the square footage of and the benefits to be derived by each tract, block, lot and parcel of land within the district. (6) State the time and place at which the governing body will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district or the benefits to be derived by the real property in the district. (7) State that all property owners liable to be assessed for such work and desiring to make a protest may submit, in writing, such protest to the governing body by a specified date not less than fifteen (15) days from the first day of publication of such notice.

History: En. Sec. 9. Ch. 429, L. 1971.

70-610. Notice of public hearing on proposed improvement. Notice shall be published in full five (5) times in a daily newspaper or once in a weekly newspaper of general circulation in the county, city or town in which said district is located. A copy of such notice shall be mailed by the governing body to each owner of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property assessment rolls of the county wherein said property is located. Mailed notices and the published notice shall state where a copy of the resolution will be available for inspection by any interested parties.

History: En. Sec. 10, Ch. 429, L. 1971.

70-611. Protests against proposed work and areas to be included in the district. At any time within the time specified in the notice, any owner of property liable to be assessed for said work may make written protest against the making of such improvements, or the creation of such district or the benefits to be derived by the real property in the district. Protests in writing must be delivered to the clerk of the governing body not later than 5:00 p.m., of the last day within said period, and said clerk shall endorse thereon the date and hour of its receipt by him.

History: En. Sec. 11, Ch. 429, L. 1971.

70-612. Public hearing on creation of special improvement district. At the time and place specified in the notice, the governing body shall meet and shall proceed to hear and pass upon all protests. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearings it shall appear to the governing body that changes in the proposed improvements or the proposed district should be made which, after consultation with the public utility concerned, appear to affect either the cost or feasibility of the improvement, the hearing shall be adjourned to a fixed future time and place and a new cost and feasibility report prepared on the basis of the contemplated changes. If additional areas are added, notice and an opportunity to protest shall again be given on the basis of such changes.

If the protests against the making of the improvement are received from more than forty per cent (40%) of the property owners owning more than forty per cent (40%) of the property in the proposed special improvement district, the district and project shall be abandoned. The same or any substantially similar special improvement district may not be renewed at any time within one (1) year. In determining whether or not sufficient protests have been filed to prevent further proceedings, property owned by a county, city or town shall be considered to the same effect as other property in the district.

The governing body shall, after considering matters brought forth at the hearing, either abandon the district and project or adopt an ordinance establishing the district and authorizing the project. Such ordinance shall be published in the manner provided in section 70-610, but need not be mailed. If an ordinance be adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of such ordinance. Such action shall be subject to the provisions of section 70-613. Thereafter, any such action shall be perpetually barred and the organization of said district shall not be directly or collaterally questioned in any suit, action or proceedings.

History: En. Sec. 12, Ch. 429, L. 1971.

70-613. Waiver of objections. Every person who has real property within the boundaries of the district and who fails to submit a written protest in accordance with section 70-611, or appear and give testimony at the public hearing, shall be deemed to have waived any objections to the creation of the district, the making of the improvements and the inclusion of his property within the district. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in section 70-617.

History: En. Sec. 13, Ch. 429, L. 1971.

70-614. Proposed assessment list. Following creation of the special improvement district, the governing body shall cause to be prepared an

assessment list detailing the total amount to be assessed, the specific properties assessed, and the amount of assessment on each piece of property.

History: En. Sec. 14, Ch. 429, L. 1971.

70-615. Proposed assessment ordinance. After the preparation of the proposed assessment list, the governing body shall cause to be prepared for adoption at the hearing hereinafter provided for, an ordinance declaring the entire cost of the improvement, including the cost of construction as determined from section 70-626, and all legal and fiscal fees and costs, the cost of the publication of notices and all other costs properly incident to the construction of the improvement and the financing thereof. Such ordinance shall specify what share, if any, of the total cost is payable from sources other than the imposition of assessments and shall incorporate the proposed assessment list provided for in section 70-614. Such ordinance shall specify the terms of installment payments, if said improvement is to be financed over a period of time.

History: En. Sec. 15, Ch. 429, L. 1971.

- 70-616. Notice of public hearing on proposed assessments. After the preparation of the aforesaid ordinance, notice of a public hearing on the proposed assessments shall be given. Such notice shall be published one (1) time in a newspaper in which the first notice of hearing was published at least twenty (20) days before the date fixed for the hearing and shall be mailed by the governing body not less than fifteen (15) days prior to the date fixed for such hearing to each owner of real property whose property will be assessed for part of the cost of the improvement at the addresses appearing on the last completed real property assessment rolls of the county wherein said affected property is located.
- 1. Each notice shall state that at the specified time and place, the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the ordinance will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement.
- 2. The notice shall further state where a copy of the ordinance proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that, subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the ordinance at the conclusion of the hearing.
- 3. The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed and the terms of installment fi-

nancing, if any. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this chapter.

History: En. Sec. 16, Ch. 429, L. 1971.

70-617. Public hearing on proposed assessment ordinance. On the date and at the time and place specified in the aforementioned notice, the governing body shall, in open and public session, hear all arguments relating to the benefits accruing to any tract, block, lot or parcel of land therein and the amounts proposed to be assessed against any such tract, block, lot or parcel. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make such corrections in the assessment list as may be considered just and equitable. Such corrections may eliminate, may increase, or may decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard. After such corrections have been made, the governing body shall make a specific finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement.

History: En. Sec. 17, Ch. 429, L. 1971.

70-618. Adoption of the assessment ordinance. After the public hearing has been concluded and all corrections made to the assessment list, the governing body shall proceed to adopt the assessment ordinance. The adoption of such ordinance shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments, and that such assessments have been lawfully levied.

History: En. Sec. 18, Ch. 429, L. 1971.

70-619. Payment of assessment. All assessments shall be due and payable within thirty (30) days after the final publication of the assessing ordinance without demand; provided, that all such assessments may be paid, at the election of the owner, in installments, with interest, as provided in section 70-620.

History: En. Sec. 19, Ch. 429, L. 1971.

70-620. Installment payments. Failure to pay the whole assessment within said period of thirty (30) days shall be conclusively considered and held to be an election on the part of all persons interested, whether under disability or otherwise, to pay in installments. In case of such election, the assessment shall be payable at such times as is provided by the governing body, not to exceed twenty (20) years, and shall bear interest in all cases on the unpaid principal at the rate not exceeding eight per cent (8%) per annum. The number of installments, the time of payments, and the rate of

interest shall be determined by the governing body and set forth in the assessing ordinance.

History: En. Sec. 20, Ch. 429, L. 1971.

70-621. Collection of installments—failure to pay installments. Installments shall be collected in the manner and at the time prescribed. When one (1) payment becomes delinquent, all payments shall, at the option of the governing body by appropriate resolutions duly adopted, become delinquent. Delinquent installments shall be subject to the same interest and penalties as are now or hereafter provided for delinquent taxes by the laws of the state of Montana, and property subject to delinquent installments shall be sold as other property is sold for taxes.

History: En. Sec. 21, Ch. 429, L. 1971.

70-622. Assessment lien. All assessments made in pursuance of this chapter, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing ordinance, a lien in the several amounts assessed against each lot or tract of land, and shall have priority over all other liens excepting general tax liens. No sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had.

History: En. Sec. 22, Ch. 429, L. 1971.

70-623. Advance payment of assessment installments. The governing body may, in the ordinance levying the assessments, provide that all unpaid installments of assessments levied against any piece of property may (but only in their entirety) be paid prior to the dates on which they become due, if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments. In addition, the property owner must pay such additional amount of interest as in the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds as interest becomes due, and any redemption premiums which may become payable on the bonds in order to retire, in advance of maturity, bonds in a sufficient amount to utilize the assessments thus paid in advance. If no bonds have been issued, then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

History: En. Sec. 23, Ch. 429, L. 1971.

70-624. Issuance of bonds. After the expiration of thirty (30) days from the date of the adoption of the ordinance levying the assessments, the governing body may issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied.

The bonds shall bear interest at not exceeding eight per cent (8%) per annum, payable as specified by the governing body over a period not exceeding twenty (20) years. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place, and shall be sold, authorized and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest, and shall be secured by and payable from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds, or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds.

The bonds shall be signed by a member of the governing body designated by the governing body and shall be countersigned by the appropriate treasurer with the corporate seal thereto affixed as appropriate and attested to by the clerk of the governing body. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond.

History: En. Sec. 24, Ch. 429, L. 1971.

70-625. Validity of assessments. No special assessment levied under this chapter shall be declared void, nor shall any such assessment or part thereof be set aside in consequence of any error or irregularity permitted or appearing in any of the proceedings under this chapter, but any party feeling aggrieved by any such special assessment or proceeding may bring a civil action to cause such grievance to be adjudicated if such action is commenced prior to the expiration of the period specified in this section. The burden of proof to show that such special assessment or part thereof is invalid, inequitable or unjust shall rest upon the party who brings such suit. Every person whose property is subject to such special assessment and who fails to appear during the public hearings on said assessments to raise his objection to such tax shall be deemed to have waived all objections to such levy except the objection that the governing body lacks jurisdiction to levy such tax.

For a period of thirty (30) days after the governing body has adopted the assessment ordinance, any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the proceedings pursuant to which the assessments have been authorized. Whenever any ordinance authorizing the issuance of any bonds pursuant to the improvement contemplated shall have been adopted, such ordinance shall be published once in a newspaper in which the original notice of hearing was published. For a period of thirty (30) days thereafter, any person whose property shall have been assessed and any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the legality of such bonds. After the expiration of such thirty (30) day period, all proceedings theretofore had by the governing body, the bonds to be issued pursuant thereto, and the special assessments from which such bonds are to be paid, shall become incontestable, and no suit

attacking or questioning the legality thereof may be instituted in this state, and no court shall have the authority to inquire into such matters.

History: En. Sec. 25, Ch. 429, L. 1971.

- 70-626. Conversion costs. In determining the conversion costs included in the cost and feasibility report required by section 70-626, the public utility shall be entitled to amounts sufficient to repay them for the following, as computed and reflected by the uniform system of accounts approved by the Montana public service commission, federal communications commission, or federal power commission, or in the event the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of said public utility.
- 1. The original costs less depreciation taken of the existing overhead electric and communication facilities to be removed.
- 2. The estimated costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed.
- 3. If the estimated cost of constructing new underground facilities exceeds the estimated cost of constructing new aerial facilities, then the cost difference between the two.
- 4. The cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for above ground facilities, or where the pre-existing easements are insufficient for the underground facilities.

History: En. Sec. 26, Ch. 429, L. 1971.

70-627. Maintenance, construction and title to converted facilities. The public utility shall have the duty to maintain, repair, and replace all underground facilities installed pursuant to this act. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from converted facilities; that is, the removal of the overhead facilities and replacement by underground facilities.

History: En. Sec. 27, Ch. 429, L. 1971.

70-628. Statement of conversion costs—notice to landowners—removal of overhead facilities. Upon completion of the conversion of the overhead electric or communication facilities on public lands and right of way to underground, the public utility shall file a verified statement of the costs of such conversion with the governing body. The governing body shall mail to each landowner a notice stating that:

- 1. Service from the underground facilities is available;
- 2. The landowner has sixty (60) days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground service facilities; and
- 3. After the sixty (60) day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area.

History: En. Sec. 28, Ch. 429, L. 1971.

- 70-629. Private property—conversion of facilities. 1. Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made at the expense of the landowner by the public utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs or ordinances. The public utility shall not be required to convert service lines on property, other than public lands and right of way, until the landowner furnishes to the public utility a permit or easement authorizing the public utility and its employees, agents and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.
- 2. Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the public utility shall file with the governing body a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter, the governing body shall mail to each landowner a copy of such verified statement, which shall be due and payable within thirty (30) days or as otherwise provided by the public utility.

History: En. Sec. 29, Ch. 429, L. 1971.

70-630. Private property—conversion upon default of owner. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in section 70-629, or if such an owner fails to convert to underground service facilities within sixty (60) days after the mailing to him of the notice provided by section 70-628, the governing body shall order the public utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement.

History: En. Sec. 30, Ch. 429, L. 1971.

70-631. Payment of public utility. Upon completion of the conversion contemplated by this chapter, the public utility shall present the governing body with its verified bill for conversion costs as computed pursuant to section 70-626, but based upon the actual cost of constructing the under-

ground facility rather than the estimated cost of the facility. In the event the conversion costs are less than the estimated conversion costs, each assessed owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine. The bill of the public utility shall be paid within thirty (30) days by the governing body from the improvement district funds or such other source as is properly designated by the governing body. In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission, federal power commission, or Montana public service commission, and as is in use at the time of the conversion by the public utility involved.

History: En. Sec. 31, Ch. 429, L. 1971.

70-632. Reinstallation of overhead facilities not permitted. Once removed, no overhead electric or communication facilities shall be installed in a special improvement district for conversion of overhead electric and communication facilities, except as authorized by this chapter.

History: En. Sec. 32, Ch. 429, L. 1971.

70-633. No limitation of public service commission's jurisdiction. Nothing contained in this chapter shall vest any jurisdiction over public utility in the governing body. The public service commission of Montana shall retain all jurisdiction now or hereafter conferred upon it by law.

History: En. Sec. 33, Ch. 429, L. 1971.

70-634. Invalidity of one provision not to affect others—exception. If any section or provision of this chapter be adjudged unconstitutional or invalid for any reason, such adjudication shall not affect the validity of this chapter as a whole, or of any section or provision hereof, which is not specifically so adjudicated unconstitutional or invalid; provided, however, if any section or provision of this chapter concerning the payment to the public utility shall be adjudged unconstitutional or invalid for any reason in such a way that the payment to the public utility or the creation of the funds for that purpose is adjudged to be invalid or unconstitutional, then such invalidity or unconstitutionality shall invalidate this chapter in its entirety and to this end and in this event the provisions of this chapter are declared to be nonseverable.

History: En. Sec. 34, Ch. 429, L. 1971.

70-635. Abatement of construction. If a special improvement district is established pursuant to this chapter, the public utility involved shall not be required to commence conversion until the ordinance, the assessment roll and issuance of bonds have become final and no civil action has been filed or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

History: En. Sec. 35, Ch. 429, L. 1971.



TITLE 71

PUBLIC WELFARE AND RELIEF

Chapter

County poor—care of, by county commissioners, 71-101 to 71-125.

Public Welfare Act part 1—to establish a state department of public welfare and county departments of public welfare, 71-201 to 71-250.

Public Welfare Act part 2—general relief—to provide aid to the unemployed destricts and the medial destricts. 2.

ployable, destitute and those made destitute through lack of employment and all those in need of public assistance not eligible or otherwise cared for under other parts of this act, 71-301 to 71-314.

Public Welfare Act part 3—to provide for old-age assistance to aged persons in need in conformity with Title 2 of the Federal Social Security

Act of 1935 or as amended, 71-401 to 71-413.

Public Welfare Act part 4—to provide for aid to needy dependent children in conformity with part 4 of the Federal Social Security Act of 1935 or as amended, 71-501 to 71-510.

Public Welfare Act part 5—to provide for aid to needy blind individuals in conformity with Title 10 of the Federal Social Security Act of 1935

or as amended, 71-601 to 71-614. Public Welfare Act part 6—to provide for services for crippled children and child welfare services, in conformity with Title 5, parts 2 and 3 of the Federal Social Security Act of 1935, or as amended, and transferring the powers and duties of the state bureau of child protection and the orthopedic commission to the authority and supervision of the state

department of public welfare, 71-701 to 71-714.

Public Welfare Act—part 7 (Only Sec. 1 of part 7 of the Public Welfare Act is given in this compilation. The repealing and severability clauses

are omitted), 71-801.

Public Welfare Act part 8—appropriations, disposition of funds and disbursements, 71-901 to 71-904.

Public Welfare Act part 9—to provide for payments to persons having silicosis, 71-1001 to 71-1009. 10.

Sale of real property held by public welfare department, 71-1101 to 11. 71-1107.

Permanently and totally disabled persons in need, 71-1201 to 71-1210. 12. Privileges of blind and physically disabled persons, 71-1301 to 71-1308. 13.

14.

Services to the blind, 71-1401 to 71-1415.

Medical assistance (71-1501 to 71-1510 Repealed), 71-1511 to 71-1526.

Economic opportunity and poverty relief, 71-1601 to 71-1604. 16.

17. Promotion and development of activities of the elderly, 71-1701.

CHAPTER 1

COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

Section 71-101. The board of county commissioners vested with control.

71-102 to 71-105. Repealed.

Support of poor and indigent persons—tax levy. 71-106.

71-107. Poor farm. 71-108 to 71-110. Repealed.

Contracts-when to be made. 71-111.

Repealed. 71-112.

Bond of contractor-duty of physician to examine and notify con-71-113. tractor.

Persons falling sick to be cared for. 71-114.

71-115. Repealed.

Persons belonging to another county to be removed. 71-116.

Nonresidents furnished temporary relief. 71-117.

71-118. County farm. 71-119. Repealed.

Burial of deceased military service men and women. 71-120.

County of residence to bear expense.

71-122. Person conducting burial to report expense.

71-123.

Duty of county clerk.
Person conducting burial not to receive compensation. 71-124.

71-125. Act not to apply to nonresidents.

71-101. (4521) The board of county commissioners vested with control. The board of county commissioners are vested with superintendence of the poor.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Statutes; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 1, p. 51, L. 1876; re-en. Sec. 955, 5th Div. Rev. Stat. 1879; re-en. Sec. 1609, 5th Div. Comp. Stat. 1887; re-en. Sec. 3200, Pol. C. 1895; re-en. Sec. 2050, Rev. C. 1907; re-en. Sec. 4521, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1957.

Cross-Reference

County department of public welfare, administration of public assistance and welfare operations, sec. 71-221.

County Still Has Definite Obligations to Poor

Public Welfare Act (71-201 et seq.) did not place sole duty of caring for county poor on state board of public welfare; while the state and federal governments now co-operate with the county in the matter, counties still have definite obligations to the poor and needy and must bear their proportionate share of social relief. State ex rel. Broadwater County v. Potter, 107 M 284, 287, 84 P 2d 796.

Discretion of Commissioners

The policy of the legislature has been to impose a wide discretion in the county commissioners and, in carrying out such policy, their power is not limited to placing the poor in the county poorhouse or

to contracting for their maintenance, but they may, if they deem it proper, extend aid in the form of fuel, groceries, clothing or small doles of money. Jones v. Cooney, 81 M 340, 263 P 429.

Repealed by Implication

While repeals by implication are not favored, some of the provisions of Ch. 82, Laws 1937 (71-201 et seq.) are in conflict with sections 71-101 et seq., relative to the county poor, among them section 71-101, placing the entire and exclusive superintendence of the poor in the board of county commissioners, and such provisions are impliedly repealed by the chapter. State ex rel. Wilson v. Weir, 106 M 526, 534, 79 P 2d 305.

Superintendent of Poor Farm

County was not liable for injuries resulting from collision which occurred while superintendent of poor farm was using county truck without permission on a private mission, the superintendent being an "employee" and not an "officer." Gag-non v. Jones, 103 M 365, 368, 62 P 2d 683.

Collateral References

Paupers 3.

70 C.J.S. Paupers § 3.

41 Am. Jur. 690 et seq., Poor and Poor Laws, § 13 et seq.

71-102. (4522) Repealed—Chapter 180, Laws of 1953.

Section 71-102 (Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to the duty of relatives to support persons without means, was repealed by Sec. 9, Ch. 180, Laws 1953. For present law, see secs. 71-233 to 71-240.

71-103 to 71-105. (4523 to 4524.1) Repealed—Chapter 74, Laws of 1957.

Sections 71-103 to 71-105 (Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Secs. 1, 2, Ch. 19, L. 1933), relating to support

of intemperate persons, eligibility for county relief, and working out of relief by able-bodied males, were repealed by Sec. 1, Ch. 74, Laws 1957.

71-106. (4465.4) Support of poor and indigent persons—tax levy. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually a tax on property not exceeding seventeen (17) mills, which levy shall be made at the time other tax levies are made on property, as provided by law.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967. See history of Sec. 16-1001.

Compiler's Note

Laws 1965, Ch. 212 provided a temporary additional tax levy and was in effect from July 1, 1965 to June 30, 1967. Prior laws, identical in nature, were Laws 1955, Ch. 73, in force from July 1, 1955 to June 30, 1957; Laws 1957, Ch. 36, in force from July 1, 1957 to June 30, 1959; Laws 1959, Ch. 46, in force from July 1, 1959 to June 30, 1961; Laws 1961, Ch. 10, in force from July 1, 1961 to June 30, 1963; and Laws 1963, Ch. 262, in force from July 1, 1963 to June 30, 1965.

Power To Maintain County Re-employment Offices

The power of boards of county commissioners to establish county re-employment offices, while not in express terms, flows from powers expressly conferred with relation to the care of the poor, such as this section, giving them broad discretionary power to "otherwise provide for the same"; on application for writ of supervisory control to review judgment of district court in upholding the action of a board declaring an emergency necessitating appropriation of additional moneys for its

poor fund budget from anticipated revenue, held such authority exists, the cost thereof chargeable against the county poor fund. State ex rel. Barr v. District Court, 108 M 433, 435, 91 P 2d 399.

Sick and Poor

The board of county commissioners did not have the power to erect and maintain at county expense a detention hospital for persons affected with contagious or pestilent diseases. Yegen v. Board of County Commrs., 34 M 79, 86, 85 P 740.

The policy of the legislature has been to impose a wide discretion in the county

The policy of the legislature has been to impose a wide discretion in the county commissioners and, in carrying out such a policy, their power is not limited to placing the poor in the county poorhouse or contracting for their maintenance, but may, if they deem it proper, extend aid in the shape of fuel, groceries, clothing or small doles of money. Jones v. Cooney, 81 M 340, 346, 263 P 429.

Collateral References

Paupers €=3, 10.
70 C.J.S. Paupers §§ 3, 18.
41 Am. Jur. 684, Poor and Poor Laws, § 5.

Reimbursement of public for financial assistance to aged persons, 29 ALR 2d 731.

DECISIONS UNDER FORMER LAW

Sick and Poor

Persons entitled to county assistance under former law were required to be both mentally or physically ill and poor, so that contract let by commissioners for care of county's sick and infirm and also for county poor as separate groups was void. Lebeher v. Commrs. of Custer County, 9 M 315, 23 P 713.

While under section 16-3211 (since repealed), the county auditor was made the superintendent of the poor and was to care for and examine all claims upon the county for charity, he was to do so under such rules and regulations as the commissioners might prescribe in their discretion. Jones v. Cooney, 81 M 340, 263

71-107. (4465.5) Poor farm. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide a farm for the support of the poor of the county, and make regulations for working the same.

History: En. Subd. 6, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Cross-References

Power of county commissioners to lease county property for operation of a board-

ing home or nursing home for aged persons, sec. 16-1036.

Power of county commissioners to operate boarding home or nursing home for the aged, secs. 16-1037, 16-1038.

Purchase authorized, sec. 71-118.

Collateral References

Paupers \$\sim 9, 45.
70 C.J.S. Paupers \sim 17, 77.
41 Am. Jur. 704, Poor and Poor Laws,
\sim 33.

71-108 to 71-110. (4525 to 4527) Repealed—Chapter 74, Laws of 1957,

Repeal

Sections 71-108 to 71-110 (Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Secs. 1, 2, Ch. 29, L. 1909; Sec. 1, Ch. 45, L. 1911; Sec. 1, Ch. 31, L. 1917; Sec. 1, Ch. 55, L. 1927; Secs. 1, 2, Ch. 50, L.

1933; Secs. 1 to 3, Ch. 131, L. 1943; Sec. 1, Ch. 124, L. 1949), relating to care of poor and indigent sick and contracts pertaining thereto, were repealed by Sec. 1, Ch. 74, Laws 1957.

71-111. Contracts—when to be made. Whenever, under existing laws, the board of county commissioners is authorized to make contracts for one year and no time is specified when the contracts shall be made, it shall be the duty of the county commissioners hereafter whenever possible, to make such contracts in the month of June of each year so that they will be better enabled to prepare their budget which under existing laws, must be prepared during the month of July. If any contracts have heretofore been made at any other time of the year and the contracts expire before the month of June, 1944, the county commissioners shall make a contract for the period between the time when the contracts now expire and June, 1944, and thereafter make the contracts as of the month of June each year.

History: En. Sec. 4, Ch. 131, L. 1943.

71-112. (4528) Repealed—Chapter 74, Laws of 1957.

Repeal

Section 71-112 (Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to the

board's rejection of any bid, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-113. (4529) Bond of contractor—duty of physician to examine and notify contractor. Any person with whom any such contract is made must execute a bond to the state in a sum not less than one thousand nor more than five thousand dollars, with two or more sureties, conditioned for the faithful performance of his contract; said bond to be approved by and filed with the chairman of the board. It is the duty of the physician with whom the contract for medical attendance is made to examine each week any person who is a charge upon the county, and if, after such examination, he is satisfied that such person is able to support and maintain himself, he must so notify the contractor having the person in charge, by leaving with the contractor a notice of the fact that such person requires no further medical attendance, and file a duplicate thereof with the clerk of the board. After the serving of said notice and filing the duplicate thereof with the clerk, the person mentioned therein ceases to be a charge upon the county.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev.

Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R. C. M. 1921.

71-114. (4530) Persons falling sick to be cared for. When any non-resident without means is sick within any county in this state, and not able to pay his board, nursing, or medical attendance, the board must, on application being made, give assistance to such person as is necessary, and if the person dies, the board must give him a decent burial, and make allowance for the expenses incurred and order the same to be paid out of the county treasury.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 10, p. 54, L. 1876; re-en. Sec. 964, 5th Div. Rev. Stat. 1879; re-en. Sec. 1618, 5th Div. Comp. Stat. 1887; re-en. Sec. 3209, Pol. C. 1895; re-en. Sec. 2059, Rev. C. 1907; re-en. Sec. 4530, R. C. M. 1921.

Liability for Expenses

Where an indigent nonresident is injured within county and requires immediate

medical and surgical attention and hospitalization and is removed to another county to obtain such treatment, the county in which the injury occurred is liable. Musselshell County v. Petroleum County, 118 M 1, 161 P 2d 905, 908.

Collateral References

Paupers \$2. 70 C.J.S. Paupers \$2. 41 Am. Jur. 702, Poor and Poor Laws, \$28.

71-115. (4531) Repealed—Chapter 74, Laws of 1957.

Repeal

Section 71-115 (Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 1, Ch. 91, L. 1931; Sec. 1, Ch. 19, Ex. L. 1933), re-

lating to the application of persons seeking relief, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-116. (4532) Persons belonging to another county to be removed. When application is made, if it appears to the satisfaction of the board that the person applying has resided in the county for one (1) year, he is entitled to the relief provided by this chapter; but if on examination it appears that the applicant is a resident of some other county of the state, the board may provide him with transportation funds to move to the county of which he is a resident.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 12, p. 54, L. 1876; re-en. Sec. 966, 5th Div. Rev. Stat. 1879; re-en. Sec. 1620, 5th Div. Comp. Stat. 1887; re-en. Sec. 3211, Pol. C. 1895; re-en. Sec. 2061, Rev. C. 1907; re-en. Sec. 4532, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1931; amd. Sec. 2, Ch. 19, Ex. L. 1933.

Collateral References

Paupers \$32, 45-54.
70 C.J.S. Paupers § 32, 45-54.
41 Am. Jur. 703, Poor and Poor Laws, § 30.

71-117. (4533) Nonresidents furnished temporary relief. Persons who have not been resident of a county one (1) year may be furnished relief by the commissioners in cases of extreme necessity and destitution.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 13, p. 55, L. 1876; re-en. Sec. 967, 5th Div. Rev. Stat. 1879; re-en. Sec. 1621, 5th Div. Comp. Stat. 1887; re-en. Sec. 3212, Pol. C. 1895; re-en. Sec. 2062, Rev. C. 1907; re-en. Sec.

4533, R. C. M. 1921; amd. Sec. 3, Ch. 91, L. 1931; amd. Sec. 3, Ch. 19, Ex. L. 1933.

Collateral References

Paupers \$ 71. 70 C.J.S. Paupers § 71.

71-118. (4534) County farm. The board may purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty (160)

acres, to be known as the county farm, and to erect thereon suitable buildings for the use, health, and employment of all persons as are a county charge, and the county farm, and the buildings thereon, must be under such rules and regulations as the board orders. It may also provide for the care, support, and maintenance of the sick, poor, and infirm of the county upon such farm.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 14, p. 55, L. 1876; re-en. Sec. 968, 5th Div. Rev. Stat. 1879; re-en. Sec. 1622, 5th Div. Comp. Stat. 1887; re-en. Sec. 3213, Pol. C. 1895; re-en. Sec. 2063, Rev. C. 1907; re-en. Sec. 4534, R. C. M. 1921; amd. Sec. 2, Ch. 73, L. 1957.

Collateral References

Paupers ≈ 9, 45.
70 C.J.S. Paupers §§ 17, 77.
41 Am. Jur. 704, Poor and Poor Laws, § 33.

71-119. (4535) Repealed—Chapter 74, Laws of 1957.

Repeal Section 71-119 (Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.) relating to surplus moneys in the poor fund, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-120. (4536) Burial of deceased military service men and women. (1) It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged service man or woman, whose duty it shall be to cause to be decently interred the body of any honorably discharged service man or woman, who shall have served in any branch of the armed services of the United States and who may hereafter die or any service man or woman who died while in service during any declared or undeclared war, or female resident of the Montana veterans' home, who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead.

- (2) The expense of burial shall be two hundred fifty dollars (\$250), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death.
- (3) The benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits.
- (4) That the expense of each burial of a female resident of the Montana veterans' home, shall not exceed the sum of two hundred fifty dollars (\$250), to be paid by the county commissioners of the county in which the deceased person resided prior to her admittance to the Montana veterans' home.
- (5) In the event any such honorably discharged person, male or female, who shall have served in the armed services of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided.

(6) Whenever any such honorably discharged person, male or female hereinbefore described shall die at any public institution of the state of Montana, other than the state veterans' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1931; amd. Sec. 1, Ch. 183,

amd. Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945; amd. Sec. 1, Ch. 310, L. 1967; amd. Sec. 1, Ch. 96, L. 1969.

Collateral References
Armed Services 225.
6 C.J.S. Army and Navy § 63.

71-121. (4537) County of residence to bear expense. The expenses of such burial shall be paid by the county in which such service man or woman dies or if death occurs while in service, the county of his last residency, but if such deceased person has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. The claimant shall be a relative or guardian unless otherwise directed. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; 4537, R. C. M. 1921; amd. Sec. 2, Ch. 310, re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. L. 1967.

71-122. (4538) Person conducting burial to report expense. It shall be the duty of the person appointed as provided in section 71-120 to cause such deceased person to be buried as provided in this act, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the name, rank, or command, so far as is known, to which the deceased belonged, as such service man or woman, the date of death, place of burial, and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial.

History: En. Sec. 3, Ch. 39, L. 1903; R. C. M. 1921; amd. Sec. 3, Ch. 310, L. re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1967. 1, Ch. 109, L. 1911; re-en. Sec. 4538,

71-123. (4539) Duty of county clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such service man or woman. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United

States for a suitable headstone, as provided by act of Congress, and to cause the same to be placed at the head of the grave of such service man or woman, the expense of which shall not exceed the sum of twenty dollars (\$20) for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 71-121 for the burial expenses.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 146, L. 1963; amd. Sec. 4, Ch. 310, L. 1967. 4539, R. C. M. 1921; amd. Sec. 1, Ch.

71-124. (4540) Person conducting burial not to receive compensation. The person appointed as provided in section 71-120 shall not receive any compensation for any duties he may perform in compliance with this act.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907; re-en. Sec. 4540, R. C. M. 1921.

71-125. (4541) Act not to apply to nonresidents. This act shall not apply to service men and women who, at the time of their death, shall not have a legal residence within this state.

History: En. Sec. 6, Ch. 39, L. 1903; 4541, R. C. M. 1921; amd. Sec. 1, Ch. 1 re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. L. 1931; amd. Sec. 5, Ch. 310, L. 1967. 4541, R. C. M. 1921; amd. Sec. 1, Ch. 125,

CHAPTER 2

PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section 71-201. Creation of department.

> 71-202. Appointment of state board—creation—salary.

71-203. Powers and duties of the state board.

- 71-206. Records to be maintained and reports rendered. 71-207. Legal services. 71-208. Divisions of administration of ad 71-204. Authority of board—disclosure of certain information forbidden.
- Authority of state department—federal funds—conformity.

- 71-209. Powers and duties of the state administrator.
- 71-210. Authority and activities of the state department.
 71-211. State department to act as agency of federal government—assistance to ward Indians.

71-212. State grants-in-aid.

- 71-213. County departments to be established.
 71-214. County commissioners ex officio county welfare board—compensation.
 71-215. County attorney and clerk—ex officio duties.

- 71-216. Powers and duties of the county board.
- 71-217. Staff personnel—how selected, paid and controlled—dismissal. 71-218. Field supervisors—functions. 71-219. Grants-in-aid based on need and after investigation.

71-220. Reports to state board.

71-221. Functions and activities of the county department. 71-222. Millage taxes to be levied—expenditures—budgets.

71-223. Right of appeal.

71-224. Right to hold property. 71-225. Power to make contracts. Fraudulent acts.

71-226.

71-227. Approval or denial of applications.

71-228. Revocation of assistance.

71-229. Assistance not assignable nor subject to legal process. 71-230. Method of issuing assistance grants—reimbursement.

71-231. Records and reports.

- 71-231.1. Filing of records showing recipients of public assistance—public records—destruction after four years.
- 71-231.2. Misuse of public assistance information.
- 71-231.3. Penalty.
- 71-232. Limitations of act.
- 71-233. Prerequisite to eligibility of applicant, investigation of financial condition of applicant's relatives-report to state department of public
- 71-234. Determination of liability for contribution to applicant's support.
- 71-235.
- Living relatives—jointly and severally liable—scale of contribution.

 Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return. 71-236.
- Effect of liability of relative on granting or continuing assistance to 71-237.
- 71-238. Right of action against relatives for contribution.
- 71-239. State department subrogated to recipient's cause of action against relatives.
- 71-240. Commencement of action—disbursement of funds collected.
- 71-241. Agreement for lien on real property of some recipients of public assistance.
- 71-242. Award of public assistance-ineligibility upon transfer of property,
- 71-243. Filing of lien-indexing-priority.
- 71-244. Foreclosure of lien.
- 71-245. Release or partial release of lien, when.
- 71-246. Lien to aftach to all recipients after July 1, 1953—suspension of assistance to recipients who fail to agree to lien.
- . 71-247. Recovery from the estate of a decedent—claim for assistance paid. Lien not to sever a joint tenancy or affect the right of survivorship. 71-248.
- 71-249. Prevention of exploitation of recipients.
- Disposition of sums recovered.

71-201. Creation of department. There is hereby created and established a state department of public welfare which shall consist of a state board of public welfare, a state administrator of public welfare and such other officers and employeees as may be hereinafter authorized.

History: En. Sec. 1, Part 1, Ch. 82, L. 1937.

Cross-Reference

Department abolished and functions transferred, sec. 82A-1902(1).

Constitutionality

Legislative control over counties is supreme, except as restricted by the constitution, and while the duty to care for the poor is primarily an obligation of the counties under section 5, article X of the constitution, the state may offer co-operation and assistance, and the legislature has the right to enact provisions, binding upon the counties, as to how they shall care for their poor, even though such action may amount to dictation to them concerning expenditures of their own funds. Not violative also of section 4 of article XII of the constitution. State ex rel. Wilson v. Weir, 106 M 526, 532, 534, 79 P 2d 305.

County Board Rules Must Conform to

The rules and regulations adopted by a county board of public welfare must conform to, and not be inconsistent with, the positive provisions of the statutes, the power given to the board in that behalf not authorizing it to change the form of relief prescribed by the legislature, under the claim that by certain provisions of the act it is given discretion in choosing the kind or form of relief it may award. State ex rel. Wilson v. Weir, 106 M 526, 530, 79 P 2d 305.

How Exhaustion of Poor Fund Remedied

Exhaustion of the county poor fund out of which county welfare board applications for relief must be paid, held no excuse for declining to issue warrants or checks thereon, since, in such event, a special tax levy may be made, unless prohibited by the constitution, or assistance may be asked from the state welfare fund. State ex rel. Wilson v. Weir, 106 M 526, 530, 79 P 2d 305.

Repealing by Implication Statutes on County Poor

Some of the provisions of Ch. 82, Laws 1937, which are included in this chapter, conflict with and by implication repeal

8 15.

provisions in the previous chapter (71-101 et seq.), so that exclusive superintendence of poor no longer vests in county commissioners. State ex rel. Wilson v. Weir, 106 M 526, 534, 79 P 2d 305.

removed by the governor for cause.

Collateral References
Paupers 4.
70 C.J.S. Paupers § 6.
41 Am. Jur. 691, Poor and Poor Laws,

71-202. Appointment of state board—creation—salary. (a) The state board of public welfare shall consist of five (5) members appointed by the governor with the advice and consent of the senate on the basis of a broad experience and interest in civic affairs and matters of public welfare. The members of the state board, no more than three (3) of whom shall be of the same political party, shall be appointed on or before February 1st of each year in which the terms of members expire, to hold office for overlapping terms of four (4) years each; provided, however, that the persons heretofore appointed and now serving as such shall constitute the state board of public welfare under this act, until their successors are appointed. The governor shall fill the first two (2) vacancies in the state board as now constituted by the appointment of members whose terms shall expire on March 3, 1955, and shall fill the remaining three (3) vacancies in the state board as now constituted by the appointment of mem-

(b) Each member of the state board shall be a citizen of the United States and a resident of the state of Montana for a period of five (5) years immediately preceding the date of his appointment. Appointments to fill vacancies in the membership of the state board shall be made by the governor for the remaining portion of such term.

bers whose terms shall expire on March 3, 1957. Board members may be

- (c) The members of the state board shall take and subscribe to the constitutional oath of office.
- (d) The governor shall designate the chairman of the state board and the state board shall elect such remaining officers of the board as it may deem necessary.
- (e) Each member of the state board of public welfare shall receive twenty dollars (\$20) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending and returning from meetings of the board, and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed twelve hundred fifty dollars (\$1,250) in any one (1) year. No member of the state board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare or any of its agencies.

Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare.

History: En. Sec. 2, Part 1, Ch. 82, L. Ch. 177, L. 1965; amd. Sec. 1, Ch. 101, 1937; amd. Sec. 1, Ch. 26, L. 1953; amd. L. 1967. Sec. 1, Ch. 117, L. 1957; amd. Sec. 29,

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Constitutional oath of office, Const. Art.

XIX, sec. 1.

Collateral References

Paupers 5, 6.
70 C.J.S. Paupers §§ 7-10.
41 Am. Jur. 691, Poor and Poor Laws,
§ 15.

- 71-203. Powers and duties of the state board. (1) In co-operation with the governor the state board shall select and appoint an administrative officer for the state department of public welfare who shall be known as the state administrator and who shall have such tenure of office, salary and administrative per diem and travel expense as the state board may establish, with the exception that the salary of said state administrator shall be in such amount as may be specified by the legislative assembly in the appropriation to the department of public welfare. If the legislative assembly does not specify the maximum salary of the administrator it shall be fixed by the state board of public welfare after approval by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The state administrator shall be selected and appointed with due regard to the education, training and ability necessary in public welfare administration and organization and shall have been a resident of the state of Montana at least five (5) years prior to his appointment.
- (2) Within six (6) months after the adoption and approval of this act it shall be the duty of the state board to establish and maintain minimum standards of service and personnel and to formulate salary schedules for the classified personnel, based upon training, experience and ability, for employees selected for positions in the state office of the state department and in county departments.

A merit system when practical but not later than one (1) year from and after the effective date of this act shall be established and maintained pertaining to qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules and the state board shall cause examinations to be held from time to time throughout the state for the purpose of establishing an available qualified list in order of merit of persons eligible for appointment. Personnel standards shall conform in so far as possible with general standards as established or required by the federal social security board.

History: En. Subd. (a) and (b), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 30, Ch. 177, L. 1965; amd. Sec. 4, Ch. 237, L. 1967.

Collateral References
Paupers © 7, 8.
70 C.J.S. Paupers § 11.
41 Am. Jur. 692, Poor and Poor Laws,

71-204. Authority of board—disclosure of certain information forbidden. The state board is charged with the authority and duty to exercise general supervision and control over all activities and agencies as provided for in each part of this act.

§ 16.

The state board shall be limited in function to that of general policy and rules and regulations and all administrative and executive authority, func-

tions and duties shall be vested in the state administrator, subject to the authority of the state board.

The state board shall be responsible for the adoption of such general policies, rules and regulations as are necessary for the government of the state department, county departments or any of its agencies, including specific regulations to prohibit political activities by employees of the state and county departments of public welfare. All such policies, rules and regulations shall conform to the Federal Social Security Act, the rules and regulations issued by the federal social security administration and also shall conform to the State Welfare Act, and all policies, rules and regulations so adopted by the state board shall be binding upon the several county departments and county boards of public welfare.

The use or disclosure of information concerning applicants or recipients of public assistance for purposes not directly connected with the administration of such assistance, shall be unlawful, and shall constitute a misdemeanor. The state department of public welfare shall adopt all rules and regulations necessary to give effect to this provision.

History: En. Subd. (c), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 129, L. 1939; amd. Sec. 1, Ch. 117, L. 1941; amd. Sec. 1, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section is compiled in

the United States Code as Tit. 42, sec. 301 et seq.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

71-205. Authority of state department—federal funds—conformity. The state department of public welfare is hereby authorized and it shall be its duty to administer and supervise all federal funds allocated to the state and all state funds appropriated to the state department of public welfare, for the activities and purposes set forth under each part of this act. The state department of public welfare is also hereby authorized and it shall be its duty to do all things necessary, in conformity with federal and state laws, for the proper fulfillment of the purposes set forth in this act.

History: En. Subd. (d), Sec. 3, Part 1, Ch. 82, L. 1937.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

Disbursement of Funds-Supervision

An application for a writ of injunction lies to prevent the delivery of a check for \$150,000 made in favor of the United States in behalf of the works progress administration by the state public welfare board in payment of materials and supplies to be used in construction of public works sponsored by the state, since it is the duty of the board to supervise the expenditure

of state funds appropriated for its use. State ex rel. Browning v. Brandjord, 106 M 395, 400, 81 P 2d 677.

Mandate

Mandate was issued by the supreme court to compel state board of public welfare to forthwith present to the state board of examiners written application setting forth the circumstances confronting it with reference to the need for money to carry out the relief program in Silver Bow County and requesting authorization for expenditures to meet the relief requirements in Silver Bow County, Montana. State v. Fouse, 137 M 483, 353 P 2d 755, 757.

71-206. Records to be maintained and reports rendered. The state department of public welfare shall maintain such records and render such

reports as may be required by the federal board and such additional records and reports as shall be found necessary for state purposes or required by the state controller. County departments shall likewise be required to maintain such records and render such reports as the state board may require.

The fiscal rules and regulations of the United States government, as enjoined upon the states in respect to the Federal Social Security Act, shall be used by the state and county departments as a method of accounting for all joint federal state funds.

History: En. Subd. (e), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 19, Ch. 249, L. 1967.

NOTE.—The Federal Social Security Act referred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seq.

71-207. Legal services. The attorney general of the state shall act as legal adviser to the state department of public welfare and shall perform such legal services as may be required and he is hereby empowered to employ such other and additional counsel as may be necessary for this purpose, and may fix the compensation therefor, provided, however, that the total sum per annum for the service shall not exceed twenty-four hundred (\$2400.00) dollars, which compensation shall be paid out of state public welfare funds.

History: En. Sec. 4, Part 1, Ch. 82, L. 1937.

71-208. Divisions of administration. The administrator, with the approval of the state board, may establish divisions in the state department for the administration of this act, and may allocate and reallocate functions between divisions as may be necessary or desirable for competent administration.

History: En. Sec. 5, Part 1, Ch. 82, L. 1937.

- 71-209. Powers and duties of the state administrator. (1) The administrator shall be the executive and administrative officer of the state department of public welfare and shall act as secretary of the state board. Before each regular biennial meeting of the legislative assembly he shall prepare and submit to the state board of public welfare for its consideration budget estimates of all funds required to be appropriated by the legislative assembly for the operation of the department during the two next ensuing fiscal years as fiscal years are defined by section 59-701. These budget estimates shall contain all information necessary for their consideration. After these budget estimates have been considered by the state board of public welfare, the administrator shall submit these budget estimates to the state budget director with requests for appropriations.
 - (2) The state administrator shall report as provided in section 82-4002.
- (3) In conformity with the merit system governing the selection and entire status of officers and employees in the state department of public welfare and in all county departments of public welfare in the state of Montana, adopted by the state board of public welfare and approved by

the social security board, the state administrator shall appoint such other state department and supervisory field personnel as may be necessary for the efficient performances of the activities of the state department. The administrator shall also supervise the appointment, dismissal and entire status of the public assistance staff attached to the county boards of public welfare in accordance with the merit system. All state department and county department personnel shall be legal residents of the state of Montana, unless it is impossible to find residents of the state possessing qualifications required by the merit system.

History: En. Sec. 6, Part 1, Ch. 82, L. Sec. 1, Ch. 255, L. 1965; amd. Sec. 30, Ch. 1937; amd. Sec. 2, Ch. 129, L. 1939; subd. 93, L. 1969.

(b) amd. Sec. 2, Ch. 117, L. 1941; amd.

- 71-210. Authority and activities of the state department. The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:
- (a) Administer or supervise all forms of public assistance, child protection and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;
- (b) Administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;
- (c) Give consultant service to private institutions providing care for the needy, indigent, handicapped or dependent adults;
- (d) Develop and co-operate with other state agencies provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions and vocational guidance and training of the blind;
- (e) Provide services to county governments in respect to organization and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions;
- (f) Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Develop policies relating to educational leave of employees of the department and prospective employees of the department; and develop policies relating to staff development needs of employees of the department. In so far as possible such personnel shall be residents of the county;
- (g) Assist and co-operate with other state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

When Adoption Requires Consent of Department

Where state department of public welfare, to which court awarded minor children on ground that the children were dependent and neglected, refused to give its consent to adoption of children, court could not make an adoption order since the department was in loco parentis to the children. State ex rel. Frederick v.

District Court, 119 M 143, 173 P 2d 626, 628.

Collateral References

Charities 42; Infants 13; Paupers 3, 8.

14 C.J.S. Charities § 53; 43 C.J.S. Infants § 9; 70 C.J.S. Paupers §§ 3, 11.
41 Am. Jur. 692, Poor and Poor Laws, § 16.

71-211. State department to act as agency of federal government—assistance to ward Indians. The state department shall act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the Federal Social Security Act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

The counties shall not be required to reimburse the state department for any portion of old-age assistance, medical assistance, aid to needy dependent children or aid to needy blind or aid to the totally disabled paid to ward Indians or for any payment on behalf of any person in a state-operated medical institution, further provided that the federal government may reimburse the state of Montana in behalf of counties, providing general relief to ward Indians, a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status. A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the Federal Social Security Act is amended to define a "ward Indian," such definition shall supersede the foregoing definition.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971.

Separability Clause

Section 19 of Ch. 325, Laws 1967 read "Legislative intent. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

NOTE.—The Federal Social Security Act referred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seq.

Applications of Ward Indians

Since the act makes no different arrangement for passing upon applications for relief to ward Indians from that applied

to others, the county board has authority to pass upon such applications, and state's rights are fully protected by having the right to review, on its own motion, any decision of the county board (71-223). State ex rel. Williams v. Kemp, 106 M 444, 452, 78 P 2d 585.

Medical Aid and Hospitalization of Ward Indians, State Expense

When not adequately provided for by the federal government, the state, without reimbursement by the county in which such Indians live, must provide medical aid and services and hospitalization for ward Indians; this subsection, which is special in character, supersedes section 71-308 (since amended), under which such services and hospitalization are made payable from poor fund. State ex rel. Williams v. Kemp, 106 M 444, 451, 78 P 2d 585.

Relief to Emancipated Indians Shared by County

Where Indian has been awarded a patent to tribal land, he becomes emancipated, and the county in which he resides must bear its share of relief of all kinds. State ex rel. Williams v. Kemp, 106 M 444, 450, 78 P 2d 585.

Relief to Ward Indians Provided by State without Reimbursement by County

Indian wards of the federal government are entitled to all the relief provided by Ch. 82, Laws 1937 (71-201 et seq.), to which the federal government contributes,

but such relief must be provided by the state and the state fund need not be reimbursed by the county. State ex rel. Williams v. Kemp, 106 M 444, 450, 78 P 2d 585.

Collateral References

Reimbursement of public for financial assistance to aged persons. 29 ALR 2d 731.

- 71-212. State grants-in-aid. In administering or supervising any state or federal funds appropriated or made available to the state department for public welfare purposes, the state department shall have the authority to:
- (a) Require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public assistance as is fixed by law relating to such assistance.
- (b) Make use of all legal processes to enforce the minimum standards prescribed by the state department under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law.
- (c) Require that each part of this act shall be in effect in all counties of the state.

History: En. Sec. 8, Part 1, Ch. 82, L. 1937.

71-213. County departments to be established. There shall be established in each county of the state a county department of public welfare which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public welfare activities of the county. Provided, however, if conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit.

History: En. Subd. (a), Sec. 9, Part 1, Ch. 82, L. 1937.

Cross-Reference

County departments continued under supervision of department of social and rehabilitation services, sec. 82A-1904.

Collateral References Paupers \$\infty 4-8. 70 C.J.S. Paupers \$ 5.

71-214. County commissioners ex officio county welfare board—compensation. The board of county commissioners, ex officio, shall be the county welfare board and is hereby authorized to devote such additional time for public welfare matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact businesss as a board of county commissioners and as a

county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners, but shall in no case receive compensation for more than one day's work for all services performed on the same calendar day.

History: En. Subd. (b), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 129, L. 1939.

Cross-Reference

County commissioners, sec. 16-901 et seq.

Compensation Per Diem Payable by County

Extra compensation of county commissioners acting as ex officio members of

county welfare board is payable by county (16-912), nothing in this act indicating that payment should be made by state board. State ex rel. Broadwater County v. Potter, 107 M 284, 286, 84 P 2d 796.

Collateral References

Counties 47; Paupers 4-8. 20 C.J.S. Counties § 81; 70 C.J.S. Paupers § 5.

71-215. County attorney and clerk—ex officio duties. The county attorney shall be, ex officio, the legal adviser to the county welfare board and shall render such legal services as the county department may require. The county clerk and recorder shall be, ex officio, the secretary and clerk of the county welfare board.

History: En. Subd. (c), Sec. 9, Part 1, Ch. 82, L. 1937.

Collateral References

Counties 89; District and Prosecuting Attorneys 7(1); Registers of Deeds 4.

20 C.J.S. Counties § 141; 27 C.J.S. District and Prosecuting Attorneys § 12(1); 76 C.J.S. Registers of Deeds § 9.

71-216. Powers and duties of the county board. The county board of public welfare shall be responsible for establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board. The county board of public welfare shall review the determinations of eligibility and amount of payment to or on behalf of individuals made by the staff of the county department for conformity with the aforesaid rules and regulations. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by said board.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965.

Collateral References
Paupers 7, 8.

70 C.J.S. Paupers § 11. 41 Am. Jur. 692, Poor and Poor Laws, § 16.

71-217. Staff personnel—how selected, paid and controlled—dismissal. Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The

staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made to its public assistance staff personnel, except that, under circumstances prescribed by the state department of public welfare, the reimbursement by the county board of public welfare may be less than one-half. All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963.

Collateral References
Paupers 5, 6.
70 C.J.S. Paupers §§ 7-10.

71-218. Field supervisors—functions. County departments shall be under the supervision of such field supervisors and subject to audit by such field auditors as may be appointed for this purpose by the state department. Such field supervisors shall be direct representatives of the state department in maintaining personal contact, supervision and advisory services between the state department and the county department, and such field auditors shall likewise be direct representatives of the state department in maintaining personal contact between the state department and the county department.

History: En. Subd. (c), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 6, Ch. 129, L. 1939.

Collateral References
Paupers 5, 8.
70 C.J.S. Paupers §§ 3-11.

71-219. Grants-in-aid based on need and after investigation. Subject to review by the county board the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and regulations and

standards of assistance prescribed by the state department. In determining the amount of grants, casual, periodic or occasional income shall not be deducted from the grant, nor shall such income render a recipient ineligible for assistance, unless such income equals or exceeds the monthly assistance grant of the recipient.

History: En. Subd. (d), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 129, L. 1939; amd. Sec. 1, Ch. 98, L. 1951.

71-220. Reports to state board. The county board shall be required to submit to the state department such monthly, quarterly or yearly reports as the state board may require in respect to county public assistance activities, county welfare or poor funds, and such state funds as are granted to the county for assistance purposes.

History: En. Subd. (e), Sec. 10, Part 1, Ch. 82, L. 1937.

71-221. Functions and activities of the county department. The county department of public welfare shall be charged with the local administration of all forms of public assistance and welfare operations in the county except that all such local administration must conform to federal and state law and the rules and regulations as established by the state department.

History: En. Subd. (a), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 199, L. 1951.

71-222. Millage taxes to be levied — expenditures — budgets. It is hereby made the duty of the board of county commissioners in each county to levy seventeen (17) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department of public welfare for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for each and all of such activities.

As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state administrator of public welfare, and it shall be his duty, at any time before the final adoption of the budget, to make such recommendations with regard to changes in any part of the budget relating to the county

poor fund as is deemed necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

The state administrator shall promptly examine the preliminary budget so submitted to him in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. It is hereby made the duty of the board to make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

The board of county commissioners shall not have the right to make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state administrator of public welfare to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; provided, however, that expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by seventeen (17) mill levy provided for in paragraph one (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the state board of health, and, when such expenditure has been approved by the state public welfare department.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963; amd. Sec. 2, Ch. 69, L. 1967.

Anticipation Warrants Required To Secure Aid

Before a county may secure aid from the state welfare board for relief purposes, it must issue warrants in anticipation of the revenues derived from the levy authorized by this section, in accordance with the budget, and such additional emergency warrants which may be freely converted into cash without discount. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

Interest on Warrants from Poor Fund Lawful

Payment of interest on registered war-

rants drawn against the county poor fund is a lawful expenditure from such fund. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 238, 82 P 2d 589.

Not Coercion or Duress by Legislature

Requirement of this section that county commissioners make levy for poor fund in order that their county might place itself in line to receive aid from state in caring for poor was not an exercise of coercion or duress on part of legislature. State ex rel. Wilson v. Weir, 106 M 526, 534, 79 P 2d 305.

Where County Budgets So as To Throw Burden on State

If a county, in making a levy authorized by this section, budgets excessive appropriations so as to cast the whole burden of general relief on the state department, the latter may compel such excesses to be transferred to the poor fund for general relief before extending aid to the county. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 238, 82 P 2d 589.

Collateral References

Paupers \$ 10.
70 C.J.S. Paupers § 18.
41 Am. Jur. 684, Poor and Poor Laws,
§ 5.

71-223. Right of appeal. If an application for assistance under this act is not acted upon by the county welfare board promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the state board of public welfare for a fair hearing by addressing a request for the same to the state department of public welfare. The state board shall, upon receipt of such an appeal, give the applicant or recipient and the county welfare board prompt notice and opportunity for a fair hearing. The state board shall prescribe the manner and form in which appeals shall be made and shall adopt such rules and regulations as are necessary for prompt holding of fair hearings. The county welfare board shall be represented at such hearing.

The state board may also, upon its own motion, review any decision of a county welfare board, and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The state board may cause such additional investigation to be made as it may deem necessary, and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

In the case of the state board reviewing a county decision on its own motion, applicants or recipients affected by such decisions of the state board shall, upon request be given reasonable notice and opportunity for a fair hearing by the state board.

All decisions of the state board shall be final and shall be binding upon the county involved and shall be complied with by the county department.

History: En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

Legislative Intent

Legislature has imposed upon county welfare department and county commissioners the duty of establishing whether indigency exists in given case and has set up procedural steps to be followed in carrying out Welfare Act. Montana Deaconess Hospital v. Lewis and Clark County, 149 M 206, 425 P 2d 316.

When Mandate To Compel Grant May Not Issue

When there is an issue between the state and county departments as to the number of applicants entitled to relief and the amount to which they are entitled, the supreme court may not issue a writ of mandate to compel the state department to make a grant of state relief funds to a county under this section, in view of the discretionary powers and the right of review granted the state department. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 233, 82 P 2d 589.

Collateral References

Paupers \$42. 70 C.J.S. Paupers \$70.

71-224. Right to hold property. The state board shall have power to acquire by purchase, exchange, or gift, on such terms and conditions and

in such manner as it may deem proper, and to acquire by condemnation in accordance with and subject to the provisions of any and all existing laws applicable to the condemnation of property for public use, and land, rights, easements, and other property, either real or personal, necessary or proper to carry out the purposes set forth in this act. Title to property purchased, or condemned, or acquired in whatever manner, shall be taken in the name of the state of Montana for the use and benefit of the state department.

History: En. Sec. 13, Part 1, Ch. 82, L. 1937.

71-225. Power to make contracts. The state board is empowered to enter into contracts and leases with the United States of America, its instrumentalities, or its agencies, or any thereof, to carry out any of the purposes set forth in this act and may in such contracts or leases authorize the United States, its instrumentalities or agencies, or any thereof, to exercise such supervision over any property belonging to the state board, or any matter or thing the subject of said contract or lease, as it may be required by the United States, its instrumentalities, or its agencies, or any thereof, until such time as any money expended, advanced or loaned by the said United States, its instrumentalities, or agencies, and agreed to be repaid thereto by the state board shall have been fully repaid. It is the purpose and intent of this act that the state board shall be authorized and empowered to accept co-operation from the United States of America, its instrumentalities and agencies in all matters deemed necessary by the state board to carry out the purposes of this act, and the state board shall have full power to do all things necessary in order to avail itself of such aid, assistance and co-operation under federal legislation heretofore or hereafter enacted by Congress or under any proclamation or order of the executive, or of any executive department or agency, of the United States, now or hereafter promulgated or made.

The state board of public welfare shall not use any state funds, directly or indirectly, for sponsoring projects (except projects for the improvement of property owned or leased by the state department of public welfare), for such undertakings as the grading or improvement of streets, alleys and highways; the building of bridges; the erection, alteration, or repair of public buildings; the improvement of parks or boulevards; irrigation and water conservation projects or similar undertakings. The state board of public welfare shall have no authority whatever to contribute, directly or indirectly, any state funds in any form or manner to projects of this nature except to projects for the improvement of property owned or leased by the state department of public welfare.

History: En. Sec. 14, Part 1, Ch. 82, L. 1937; amd. Sec. 9, Ch. 129, L. 1939.

Collateral References Paupers©3. 70 C.J.S. Paupers § 3. Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up "state plan" contemplated by it. 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220 and 121 ALR 1002.

71-226. Fraudulent acts. Whoever knowingly obtains, or attempts to obtain, or aids, or abets any person to obtain by means of willfully false

statement or representation or by impersonation, or other fraudulent device, public assistance to which he is not entitled, assistance greater than that to which he is justly entitled; or whoever aids or abets in buying or in any way disposing of the property, either personal or real, of a recipient of assistance without the consent of the county department and with the intent to defeat the purposes of this act, shall be guilty of a misdemeanor. In assessing the penalty the court shall take into consideration, among other factors, the amount of money fraudulently received.

History: En. Sec. 15, Part 1, Ch. 82, L. 1937.

Cross-References

Aiding in misdemeanor, sec. 94-4706. Punishment of misdemeanor, sec. 94-116.

Collateral References

Paupers 53.

70 C.J.S. Paupers § 80. 37 Am. Jur. 2d 65 et seq., Fraud and Deceit, § 41 et seq.

Criminal liability in connection with application for, or receipt of, public relief or welfare payments. 92 ALR 2d 421.

71-227. Approval or denial of applications. Approved or denied applications for assistance under this act shall be signed by the chairman and one other member of the county board. In the event that the state board may require all such actions to be reviewed and receive the final approval or disapproval of the state department, the state board shall designate certain executive officers of the state department who shall sign such state department approvals or disapprovals.

History: En. Sec. 16, Part 1, Ch. 82, L. 1937.

70 C.J.S. Paupers § 69. 41 Am. Jur. 696, Poor and Poor Laws, § 21.

Collateral References

Paupers 41.

71-228. Revocation of assistance. If at any time the county or state departments have reason to believe, by reason of a complaint or otherwise, that public assistance under this act has been improperly granted, it shall cause an investigation to be made. If it appears as a result of any such investigation that the assistance was improperly granted, the state department shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked.

History: En. Sec. 17, Part 1, Ch. 82, L. 1937.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

71-229. Assistance not assignable nor subject to legal process. Assistance granted under this act shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this act shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937.

- 71-230. Method of issuing assistance grants—reimbursement. (a) Checks in payment of public assistance, as provided for in each part of this act, with the exception of general relief, shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee and the original monthly payment shall be from the state public welfare accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.
- Whenever the state department of public welfare, acting pursuant to standards established by said department, shall determine that any otherwise eligible recipient of old-age assistance, aid to the needy blind, aid to the permanently and totally disabled, has, by reason of any physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare, the department may under standards established under the state plan, make the public assistance payment on behalf of such recipient to another person found by the department to be interested in or concerned with the welfare of such needy individual. Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the state department of public welfare, running in favor of the needy individual and the state of Montana, conditioned upon the faithful use by such other person of the funds for the welfare of the said needy individual. Such bond shall be in an amount equal to six (6) times the amount of the monthly payment involved.
- (c) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department must make such reimbursement to the state department within twenty (20) days after such claim is presented.

History: En. Sec. 19, Part 1, Ch. 82, amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. L. 1937; amd. Sec. 1, Ch. 71, L. 1957; 1, Ch. 244, L. 1969.

71-231. Records and reports. Each county department shall keep such records and make such reports and in such detail as the state department may from time to time require, and shall transmit to the state department upon its request copies of applications and any or all other records pertaining to any case. The state department is hereby authorized and directed to keep such records, in such form and containing such information, as the federal social security board may from time to time require, and comply with such provisions as the federal board may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 20, Part 1, Ch. 82, L. 1937; amd. Sec. 10, Ch. 129, L. 1939.

71-231.1. Filing of records showing recipients of public assistance—public records—destruction after four years. The county welfare board of each county shall on or before the thirtieth (30th) day of January, April, July and October of each year file with the county clerk and recorder of each county a complete report showing the names of all recipients receiving public assistance, together with the amounts paid to each during the preceding quarter.

The reports so filed with the county clerk and recorder shall be and the same hereby are declared to be public records and shall be open to public inspection at all times during the regular office hours of said county clerk and recorder. The reports so filed may be destroyed by the county clerk and recorder in the presence of the board of county commissioners and upon order of said board of county commissioners at any time after the period of four (4) years from their filing date.

History: En. Sec. 1, Ch. 179, L. 1953.

71-231.2. Misuse of public assistance information. Except as provided in this act, is shall be unlawful for any person, body, association, firm, corporation or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists or names for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of public assistance.

History: En. Sec. 2, Ch. 179, L. 1953.

71-231.3. Penalty. Any person, body, association, corporation, firm, or other agency who shall willfully or knowingly violate any provision of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than one thousand (\$1,000.00) dollars, to which may be added imprisonment in the county jail for any determinate period not to exceed sixty (60) days. If the violation is by other than an individual, the imprisonment may be adjusted against any officer, agent, employee, servant, or other person of the association, corporation, firm or other agency who committed or participated in such violation and is found guilty thereof.

History: En. Sec. 3, Ch. 179, L. 1953.

71-232. Limitations of act. All assistance granted under this act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act.

History: En. Sec. 21, Part 1, Ch. 82, L. 1937.

71-233. Prerequisite to eligibility of applicant, investigation of financial condition of applicant's relatives—report to state department of public

welfare. Each county public welfare department acting directly or through an authorized agent, upon receipt of an application for public assistance, in addition to duties otherwise imposed and acting without unnecessary delay and with diligence, shall investigate the facts relating to the income and financial condition of the applicant's living husband, wife, father, mother, son or daughter or any or all of them, and provided, further, that such investigation shall be a prerequisite to the establishment of eligibility. In making such investigation, the department and its duly authorized agents hereby are authorized to require statements under oath from the applicants and from any such person whose income and financial condition is at issue. A report containing the results of such investigation and recommendations thereon, shall be promptly made to the state department of public welfare.

History: En. Sec. 1, Ch. 180, L. 1953.

Collateral References

Nature of care contemplated by statute imposing general duty to care for indigent relatives. 92 ALR 2d 348.

71-234. Determination of liability for contribution to applicant's support. The state department of public welfare, upon receipt of the report of the investigation referred to in section 71-233, may make such further investigation of the matter as it may deem necessary to ascertain the facts in relation thereto and shall cause to be made a determination of the liability of each living relative of the applicant referred to herein for contribution to the applicant's support in accordance with the "relatives contribution scale" established by this act. In determining the ability to contribute, the financial circumstances of such relatives shall be given due consideration in the order named, and in unusual cases a contribution of less than the amount fixed in the relatives contribution scale may be authorized by the state department of public welfare upon recommendation contained in the report of the investigation referred to in section 71-233 or any subsequent investigation by either the county or state departments, and provided that such determination of financial circumstances of each such relative investigated shall be fully set forth as part of the case record of the applicant.

History: En. Sec. 2, Ch. 180, L. 1953.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

71-235. Living relatives—jointly and severally liable—scale of contribution. The living relatives of each needy person, named in this act, shall be and they hereby are made jointly and severally liable in the order named in section 71-233 to such needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

RELATIVES CONTRIBUTION SCALE

A. Net monthly	B. Number of persons dependent upon income exclusive of applicant									
income of responsible relatives in	1	2	3	4	5	6	7	8	9	10 and
one family in dollars		C. M.	aximuı	n requ	ired m	onthly	contri	bution		over
Under 195	0	0	0	0	0	0	0	0	0	0
195 to 254	15	0	0	0	0	0	0	0	0	0
255 to 314	30	10	0	0	0	0	0	0	0	0
315 to 394	50	30	20	15	5	0	0	0	0	0
395 to 474	70	50	40	35	25	20	10	0	0	0
475 to 554	90	70	60	55	45	40	30	20	10	0
555 to 654 1	00	90	80	75	65	60	50	40	30	20
655 to 754 1	00	100	100	100	90	85	75	65	55	45
755 to 854 1	00	100	100	100	100	100	100	90	80	70
855 and up 1	00	100	100	100	100	100	100	100	100	90

For the purposes of this act: (1) A needy person is one who is eligible for public assistance under the laws of this state; (2) "Net monthly income" shall be deemed to mean one-twelfth (1/12) of the difference between the net income for the taxable year as the term net income is defined in section 84-4901, subsection ten (10), and the state income tax paid as determined by the state income tax return filed during the current year.

In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each of said spouses during that time shall be considered to be one-half $(\frac{1}{2})$ of the amount shown in the scale established by this act.

History: En. Sec. 3, Ch. 180, L. 1953.

Collateral References

Paupers \$\infty\$ 37(1).

70 C.J.S. Paupers \$ 60.

41 Am. Jur. 684, Poor and Poor Laws,

§ 6.

71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return. The state department of public welfare shall be required and it shall be its duty, when necessary to determine the financial circumstances of those relatives herein named, to secure from the state board of equalization a report of the amount of income set forth on the return required by section 84-4914. The state board of equalization is authorized and it shall be its duty to divulge or make known to the state department of public welfare the amount of income or any particulars set forth or disclosed in any report or return required under the State Income Tax Act, and submitted by the relatives herein named.

A separate income tax return shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of the individual making it; a joint income tax return of husband and wife shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of either spouse, for the purposes of this act.

It shall be unlawful for the board or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner any information secured from the state board of equalization in the administration of this act, except for purposes directly connected with the administration of this act. Violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

History: En. Sec. 4, Ch. 180, L. 1953.

71-237. Effect of liability of relative on granting or continuing assistance to a recipient. The liability of a relative to contribute to the support of a recipient of public assistance established by this act shall not be grounds for denying or discontinuing public assistance to any person; provided, however, that by accepting such public assistance the recipient thereof shall be deemed to consent to the recovery of an amount equal to the liability as set forth in section 71-235 from any responsible living relative or relatives by the state public welfare department as in this act provided.

History: En. Sec. 5, Ch. 180, L. 1953.

71-238. Right of action against relatives for contribution. From and after the effective date of this act each needy person in Montana shall have a cause of action at law against any living relative or relatives referred to in section 71-233 for the monthly contribution to his or her support established by section 71-235; in any such action at law judgment may be entered for all accumulated contributions for which defendant is liable under this act.

History: En. Sec. 6, Ch. 180, L. 1953. Compiler's Note

The effective date of this act was July 1, 1953.

Collateral References

Paupers ≈37(2).
70 C.J.S. Paupers §§ 61, 62.
41 Am. Jur. 687-690, Poor and Poor Laws, §§ 9-12.

71-239. State department subrogated to recipient's cause of action against relatives. The state department of public welfare shall be subrogated to the right of each needy person who is a recipient of public assistance in this state, to prosecute an action at law arising under the provisions of this act against any living relative of such recipient named in section 71-233.

History: En. Sec. 7, Ch. 180, L. 1953.

71-240. Commencement of action—disbursement of funds collected. The state department of public welfare shall be and is hereby authorized, either in its own name or in the name of the recipient of public assistance to whose right of action it has been subrogated, to commence and prosecute to final conclusion such legal proceedings as may be deemed necessary for

the amount of the relatives' required contribution as determined under this act. From the amount collected as a result of such legal proceedings, the state department of public welfare shall deduct the full amount previously paid as public assistance under the laws of this state and the remainder thereof, after deducting the costs of the proceeding, shall be delivered to the recipient. The amount of any previously paid public assistance recovered in any such proceedings shall be distributed by the state department of public welfare to the United States government, the county, and to the state general fund, as their interests may appear. The attorney general shall at the request of the state board of public welfare prosecute any and all actions instituted under this act, and is hereby authorized to instruct the county attorneys of the counties in which such actions may arise, to prosecute the same.

History: En. Sec. 8, Ch. 180, L. 1953.

71-241. Agreement for lien on real property of some recipients of public assistance. No application for a public assistance grant except applications made pursuant to chapter 5, Title 71 (aid to dependent children), chapter 3, Title 71 (general relief), chapter 6, Title 71 (aid to needy blind) and chapter 14, Title 71 (services to the blind), and for vendor medical payments in behalf of individuals, shall be approved unless the applicant shall execute and deliver with such application an agreement, in such form as the state board of public welfare shall prescribe, acknowledging and agreeing that the amount of all assistance thereafter paid to the applicant, from whatever source such assistance may be derived, shall constitute an obligation and indebtedness of the applicant to the state and county which shall be secured by a lien upon all real property of the applicant then owned or acquired while a recipient of such assistance.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 15, Ch. 212, L. 1965; amd. Sec. 1, Ch. 60, L. 1967.

71-242. Award of public assistance—ineligibility upon transfer of property, when. Upon completion of the investigation, the county board shall determine whether the applicant is eligible for public assistance under the provisions of this act, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin. Public assistance shall not be granted under the Montana State Welfare Act to any person who has deprived himself directly or indirectly of any property for the purpose of qualifying for assistance under this act. Any person who shall have transferred or shall transfer real property or interests in real property within five (5) years of the date of application for public assistance without receiving adequate consideration therefor in money or money's worth shall be presumed to have made such transfer for the purpose of qualifying for assistance under this act.

The state department of public welfare, if necessary to conform with the United States Social Security Act, may issue rules and regulations to the county welfare departments requiring the use of the declaration method, in such form as the state department may prescribe for the purpose of determining eligibility, regardless of any other investigative provisions under this act, and for all types of assistance. These regulations may include any additional investigations the state department may require.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 1, Ch. 327, L. 1969.

ferred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seg.

Compiler's Note

The Federal Social Security Act re-

71-243. Filing of lien—indexing—priority. Immediately after the making of any award of public assistance the county department of public welfare shall cause to be filed in the office of the county clerk and recorder of the county wherein the recipient of such award is residing, and in the office of the county clerk and recorder of any other county wherein real property owned by the recipient is situated, a certificate, in such form [as] shall be prescribed by the state board, including a statement of the name and residence of the recipient, the amount of assistance, and the date on which the assistance shall begin. Said certificate shall be filed by the county clerk and recorder as a lien against the real property of the recipient therein named, and shall be indexed in the same manner as real estate mortgages, and from and after the filing of said certificate all grantees, encumbrances and attaching creditors of any real property owned by such recipient shall be deemed to have constructive notice thereof, and said certificate shall create a general lien upon all real property of the recipient to secure the repayment of the entire amount of all assistance thereafter paid to such recipient, which lien shall be prior and superior in right to all liens, encumbrances or conveyances affecting said real property which may be thereafter filed or recorded.

History: En. Sec. 3, Ch. 228, L. 1953.

Compiler's Note

The bracketed word "as" was inserted by the compiler.

71-244. Foreclosure of lien. No foreclosure of any such lien affecting property occupied as a home by the recipient or his or her spouse, or his or her dependent, shall be instituted during the lifetime of the recipient except upon a finding and determination by the county department of public welfare, subject to review by the state board, that the assistance awarded to such recipient was obtained by fraud, or except upon a conveyance of such property by the recipient.

Said lien may be foreclosed in the manner provided by law for the enforcement of mechanic's liens upon real property in the district court of the county wherein the certificate hereinbefore provided for has been filed, and the decree for the enforcement thereof shall provide for the sale of the real property of the recipient, or so much thereof as may be necessary to satisfy said lien, and said sale shall be conducted by the sheriff in the manner provided by law for the sale of real property under execution. Suits for the foreclosure of such lien shall be brought in the name of the county for the benefit of itself and the state board of public welfare.

History: En. Sec. 4. Ch. 228, L. 1953.

71-245. Release or partial release of lien, when. Whenever the obligation secured by said lien shall have been paid, or shall have been discharged by settlement, the state board of public welfare shall not later than 30 days after receipt of payment cause a release and satisfaction thereof to be entered in the office of the county clerk and recorder of the county wherein such lien is filed. The state board is further empowered to cause a partial release of such lien to be entered with respect to any portion or portions of the real estate of the recipient.

History: En. Sec. 5, Ch. 228, L. 1953.

71-246. Lien to attach to all recipients after July 1, 1953—suspension of assistance to recipients who fail to agree to lien. The lien hereinbefore provided for shall attach to the real property of all persons who receive public assistance from and after the 1st day of July, 1953. Not less than sixty (60) days prior to said date each county department of public welfare in this state shall mail or deliver to all recipients of public assistance within said county a form of the agreement provided for in section 71-241, together with a summary of the provisions of this act and a notice that all recipients are required, as a condition precedent to the continuance of public assistance awards, to execute and return such agreement to said county department prior to July 1, 1953; and payments of assistance shall be suspended as to all recipients who fail or neglect to execute and return said agreements within said period, unless the state board of public welfare finds that circumstances make such return within the specified time impracticable.

History: En. Sec. 6, Ch. 228, L. 1953.

71-247. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of public assistance other than aid to dependent children, or general relief, the state department of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act, separately stating therein the amount of all assistance paid from and after the 1st day of July, 1953, which is secured by the lien herein provided for. Said claim shall be a preferred claim having the preference specified by subdivision 4, section 91-3601.

No claim hereunder shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent, as a home, but the lien provided for by this act shall, until paid, continue in full force as against the real estate of such recipients notwithstanding postponement of enforcement thereof by reason of such occupancy of the surviving spouse or dependent.

The state board of public welfare shall not assert its lien or claim during the lifetime and continued occupancy of said real estate by the surviving spouse or dependent unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the board shall file its claim hereunder.

History: En. Sec. 7, Ch. 228, L. 1953.

71-248. Lien not to sever a joint tenancy or affect the right of survivorship. The lien herein provided for shall not sever a joint tenancy or affect the right of survivorship except that said lien shall be enforceable to the extent that the recipient had an interest prior to decease.

History: En. Sec. 8, Ch. 228, L. 1953.

71-249. Prevention of exploitation of recipients. In the administration of this act, the state board shall safeguard the interests of recipients of public assistance, to the end that their property shall not be exploited nor pass from their possession without adequate consideration.

History: En. Sec. 9, Ch. 228, L. 1953.

71-250. Disposition of sums recovered. All sums recovered hereunder from any source shall be distributed to the county and to the general fund of the state of Montana as their interests may appear; and if the federal law so requires, the federal government shall be entitled to a share of any amounts collected hereunder in proportion to the amounts which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state board to the United States government.

History: En. Sec. 10, Ch. 228, L. 1953.

CHAPTER 3

PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHER-WISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section 71-301. Administration.

Eligibility requirements for general relief. 71-302.

71-303. Eligibility for relief-investigation of resources.

71-304. Status of aliens and interstate transients—other conditions.

71-305. Equal consideration.

Right of appeal and hearing. 71-306.

71-307. Relief by check or disbursing orders.

Medical aid and hospitalization. 71-308.

Primary obligations of the board of county commissioners. Certification for relief employment. 71-309.

71-310.

Grants from state funds to counties. 71-311.

71-312. Application for relief.

Investigations of relief applications. 71-313.

Granting of assistance. 71-314.

71-301. Administration. The state department and county departments of public welfare are hereby authorized and charged with the administration and supervision of general relief under the powers, duties and functions as prescribed in Part I of this act.

History: En. Sec. 1, Part 2, Ch. 82, L. 1937.

Assistance to Striking Union Members Mandamus could be used to compel the department of public welfare to rescind a general order providing that striking members of a union were to receive less general relief assistance than other general relief recipients, and to require the department to give union members the same general relief as given other applicants in the same class. State ex rel. International Union of Mine, Mill & Smelter Workers v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727.

Collateral References

Paupers 57, 8.
70 C.J.S. Paupers § 11.
41 Am. Jur. 692, Poor and Poor Laws, § 16.

Law Review

Administrative agencies—department of public welfare—discrimination against welfare recipients because of source of unemployment [State ex rel. Int. Union v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727], 21 Mont. L. Rev. 222 (Spring 1960).

71-302. Eligibility requirements for general relief. An applicant to be eligible for general relief must have resided in the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence. If a person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of Montana. Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be counted in determining the matter of county residence.

History: En. Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 11, Ch. 129, L. 1939; amd. Sec. 4, Ch. 117, L. 1941; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 1, Ch. 99, L. 1963.

Collateral References

Paupers \$32.

Constitutionality of poor relief law, as affected by requirement as to period of residence as condition of relief. 132 ALR 518.

71-303. Eligibility for relief—investigation of resources. An applicant for assistance including medical care and hospitalization shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life, and assistance shall be provided to meet a minimum subsistence compatible with decency and health.

History: En. Subd. (b), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 129, L. 1939.

71-304. Status of aliens and interstate transients—other conditions. Aliens found to be illegally within the United States shall not be eligible for relief from state funds.

Interstate transients, without legal Montana residence, shall not be eligible for continued assistance from state funds but may, if in distress, receive temporary relief from either state or county funds until such time as such transients may be returned to their state of legal residence or state or [of] origin. If transient families are stranded and without means of return, their transportation may be paid from state funds.

An applicant must not be in need of continued care in a public institution because of physical or mental condition.

Individuals receiving assistance under other parts of this act shall not receive supplementary cash assistance from state relief funds.

History: En. Subd. (c) to (f), Sec. 2, Part 2, Ch. 82, L. 1937.

Compiler's Note

The bracketed word "of" was inserted by the compiler.

County Liable

Where an indigent nonresident is injured within county and requires immediate med-

ical and surgical attention and hospitalization and is removed to another county to obtain such treatment, the county in which the injury occurred is liable. Musselshell County v. Petroleum County, 118 M 1, 161 P 2d 905, 908.

Collateral References

Paupers \$43(1).
70 C.J.S. Paupers § 67.

71-305. Equal consideration. Persons eligible for and in need of relief shall be, whether employable or unemployable, given equal consideration for public assistance as those persons eligible for assistance under other parts of this act.

History: En. Sec. 3, Part 2, Ch. 82, L. 1937.

Assistance to Striking Union Members

Mandamus could be used to compel the department of public welfare to rescind a general order providing that striking members of a union were to receive less general relief assistance than other general relief recipients, and to require the department to give union members the same general relief as given other applicants in the same class. State ex rel. International Union of Mine, Mill & Smelter Workers v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727.

71-306. Right of appeal and hearing. If an application for assistance under this chapter is not acted upon by the county welfare board promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the state department for a fair hearing. The state department shall, upon receipt of such an appeal, give the applicant or recipient prompt notice and opportunity for a fair hearing. Individuals or committees with complaints or grievances shall have the opportunity to present their complaints or grievances to either the county board or the state department and it shall be required that due consideration shall be given all proven facts presented by such individuals or committees and the county board or the state department shall be required to relieve such situations, if not otherwise prohibited by law and to the extent of funds available.

History: En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

Legislative Intent

Legislature has imposed upon county welfare department and county commis-

sioners the duty of establishing whether indigency exists in given case and has set up procedural steps to be followed in carrying out Welfare Act. Montana Deaconess Hospital v. Lewis and Clark County, 149 M 206, 425 P 2d 316.

Collateral References

Paupers € 42. 70 C.J.S. Paupers § 70.

71-307. Relief by check or disbursing orders. All relief disbursements by county departments of public welfare shall be by warrant or check;

provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. It is further provided, however, that if the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform such work at the prevailing rate of wages paid by that county for similar work to be paid from the county poor fund in place of granting him general relief.

The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and is authorized to enter into such agreements with the industrial accident board as may be necessary to carry out the provisions of this section.

Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for a period of one (1) week for each refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963.

Appeal from County to State Board

Exercise of the right of appeal from the action of a county body to a state body, as from a county to the state public welfare board, is not always a condition precedent to the right to resort to the courts for relief, as where county board wrongfully refused to issue a check to applicant, in which case appeal to state board would have been without object or purpose under the act. State ex rel. Wilson v. Weir, 106 M 526, 531, 79 P 2d 305.

Relief Warrants Must Be Readily Convertible into Cash

Provision that relief disbursements shall

be by warrant or check representing cash on demand means warrants or checks which are the equivalent of cash, i.e., readily convertible into cash without discount. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

Where Sending to Poor Farm Violation of Duty

Where a county board placed applicant in poor farm instead of issuing to him a warrant or check representing cash on demand as required by this section, it violated a clear legal duty, enforceable

by the writ of mandate. State ex rel. Wilson v. Weir, 106 M 526, 529, 79 P 2d 305.

71-308. Medical aid and hospitalization. Medical aid and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the

dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse each county in full upon proper claim being made to the department of public welfare; provided, further, that in all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare.

The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by such board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of such medical attendance.

The board of county commissioners shall have the responsibility of making suitable arrangements to provide respectable burial for those for whom such expenses are not otherwise available.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Cr. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 586, L. 1957; amd. Sec. 16, Ch. 212, L. 1965.

Emergency Hospitalization

Hospital, located in one county, which performed emergency appendectomy on indigent who was resident of another county, was a real party in interest in suit against county in which patient resided; statute providing that medical aid for indigents is "responsibility of the county" was broad enough to encompass emergency medical aid rendered outside indigent's county of residence. Montana Deaconess Hospital v. Lewis and Clark County, 149 M 206, 425 P 2d 316.

Although family of ten had earnings in excess of county welfare board's standard minimum income for determining indigen-cy, application of the standard to deny medical assistance was unreasonable where the family had considerable medical expense and a history of indebtedness. Saint Patrick Hospital v. Powell County, — M __, 477 P 2d 340.

Evidence of Indigency

Fact that alleged indigent had never supported herself and apparently never would was proof of medical indigency in every legal and social sense in spite of fact she was employable and notwith-standing absence of evidence of reasons for her inability to be productive citizen. Montana Deaconess Hospital v. Lewis and Clark County, 149 M 206, 425 P 2d

Wandering Child

Mandamus lie to compel state board of public welfare to reimburse county for medical and hospital expenses paid for a wandering thirteen-year-old child from another state who had roamed from place to place for approximately one month, without means of support, before she threw herself in front of a moving automobile. State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 M 209, 376 P 2d 1002, 1004.

Collateral References

Paupers 48. 70 Ĉ.J.S. Paupers § 74 et seq.

Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority. 93 ALR 900.

71-309. Primary obligations of the board of county commissioners. Except as otherwise provided in other parts of this act, it is hereby declared to be the primary legal duty and financial obligations of the board of county commissioners to make such tax levies and to establish such budgets in the county foor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent residents as are in need of institutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provisions for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges against and payable from the county poor fund.

History: En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951; amd. Sec. 17, Ch. 212, L. 1965.

Collateral References Paupers 10. 70 C.J.S. Paupers § 18.

71-310. Certification for relief employment. For such time as the federal government shall require, it shall be the duty and responsibility of the state and the county public welfare department to make all investigations and certifications required by federal employment agencies in respect to the eligibility of employable persons for employment on government emergency work projects.

History: En. Sec. 8, Part 2, Ch. 82, L. 1937.

71-311. Grants from state funds to counties. If the whole of a six (6) mill levy together with the whole of the per capital tax authorized by said section 71-106, and the income to the county poor fund from all other sources shall prove inadequate to pay for the general relief in the county actually necessary and to meet the county's proportionate share of public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; and if warrants upon the county poor fund can no longer lawfully be issued to meet these charges; and if the board of county commissioners is unable to declare an emergency for the purpose of providing additional funds or to provide additional funds from any other source; and if the county has in all respects expended the county poor fund only for lawful purposes; and if all of these conditions actually exist in any county of the state, then the state department of public welfare shall, in so far as it has funds available, come to the assistance of such county, in the following manner:

When the county in question has submitted proof to the state board of public welfare through such reports as it may require and through other evidence that may be deemed necessary, that these conditions exist, then the state board may authorize the state administrator to issue a check to the county treasurer of the county for general relief purposes, and the county department of public welfare shall make the disbursements of these state funds for general relief purposes within the county. These grants-in-aid from the state department may be used for any relief activity lawfully conducted by the county, including medical aid, hospitalization and institutional care; but no part thereof may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances or equipment for any such building.

Immediately upon receiving notice that such grant-in-aid has been made by the state department, it shall be the duty of the board of county commissioners to adopt an emergency budget in accordance with the provisions of section 16-1907 but without being required to publish any notice of intention to adopt such emergency budget or to hold a hearing thereon. This emergency budget shall appropriate the whole amount of the general relief grant from the state department for the various classes of expenditures from the poor fund for which the grant-in-aid was made by the state department. The money received through such general relief grant from the state department shall be placed in a special poor fund account kept separate and distinct from the poor fund accounts arising under the original poor fund budget, and all expenditures from this special poor fund account shall be made by a separate series of warrants or cheeks.

History: En. Sec. 9, Part 2, Ch. 82, L. 1937; amd. Sec. 14, Ch. 129, L. 1939; amd. Sec. 7, Ch. 117, L. 1941; amd. Sec. 11, Ch. 199, L. 1951.

Collateral References Paupers \$\infty 43(4). 70 C.J.S. Paupers \\$ 72.

71-312. Application for relief. Each applicant for general relief shall make application to the county department of public welfare and the application shall be made in the manner and on the form prescribed by the state department, provided, however, that no application form shall contain what is commonly known as "the pauper's oath." All persons wishing to apply for general relief shall have the opportunity to do so.

History: En. Sec. 10, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 199, L. 1951.

Collateral References
Paupers \$\infty\$-41.
70 C.J.S. Paupers \\$ 69.

71-313. Investigations of relief applications. Whenever a county public welfare department receives an application for general relief assistance, an investigation shall be promptly made. The investigation of each application for general relief assistance shall be conducted by the county board through a staff worker of the county department. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the grant, and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 11, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 199, L. 1951.

71-314. Granting of assistance. The amount of assistance granted any person or family shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951.

Collateral References
Paupers 41, 43(2).
70 C.J.S. Paupers §§ 69, 71.

CHAPTER 4

PUBLIC WELFARE ACT PART 3-TO PROVIDE FOR OLD-AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-401. Provision for administration. 71-402. Eligibility requirements for old the section of the secti

Eligibility requirements for old-age assistance. Amount of assistance.

71-403.

- 71-404. Application for assistance. 71-405. 71-406. 71-407.
- County share of participation.
 Investigation of applications.
 Reinstatement of recipients of old-age assistance, when.

71-408. Funeral expenses.

71-409. 71-410. Assistance may be paid to guardian. Subsequent increase of income.

71-411. Periodic review of assistance grants.

71-412. Recovery from the estate of a decedent—claim for assistance paid.

71-413. Change of residence of person receiving old-age assistance.

- 71-401. Provision for administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of old-age assistance under the powers, duties and functions as prescribed in sections 71-201 to 71-232.
- (b) The county department of public welfare shall be charged with the local administration and supervision of old-age assistance, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.
- (c) It is hereby mandatory and required that the state plan and operation of old-age assistance shall be in effect in each and every county of the state and the administration and supervision of old-age assistance shall be uniform throughout the several counties of the state.
- The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to old-age assistance.
- (e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.
- (f) Definition, old-age assistance as used in this chapter means money payments to or payments made for medical care in behalf of aged needy individuals.

History: En. Sec. 1, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 71, L. 1957.

Cross-Reference

Aged persons homes, regulation, sec. 69-5201 et seq.

Collateral References

Social Security and Public Welfare 61, 62.

81 C.J.S. Social Security and Public

Welfare § 22. 41 Am. Jur. 679, Poor and Poor Laws, generally; 48 Am. Jur. 542, Social Se-

curity, Unemployment Insurance and Retirement Funds, § 39.

Constitutionality of old age pension or assistance acts. 37 ALR 1524; 86 ALR 912 and 101 ALR 1215.

Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up "state plan" contemplated by it. 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220 and 121 ALR 1002.

Poor relief from Federal or state funds as affecting rights of applicant for relief or municipalities in that regard. 120 ALR

Exhaustion of administrative remedies as condition of resort to court in respect of right claimed under social security or old age acts. 130 ALR 882.

Construction and application of state social security act as affected by terms of the Federal act or judicial or administra-

Right of public to reimbursement from recipient, his estate or relatives, of old age assistance payments. 29 ALR 2d 731.

- 71-402. Eligibility requirements for old-age assistance. Old-age assistance shall be granted any person who:
 - Has attained the age of sixty-five (65);
- (b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health;
- (c) Any person otherwise qualified who has no legal county residence, shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in said county. If a recipient moves from one county to another county, he shall retain residence in the original county until he has resided in the second county for a period of one year at which time he will gain residence in the second county;
- (d) Is not at the time of receiving assistance an inmate of any public institution, except as a patient in a public medical institution; is not a patient in an institution of tuberculosis or mental illness or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis; however, this does not preclude medical payments made to any institution in behalf of any eligible resident thereof in conformity with the provisions of sections 71-1512 through 71-1524, as amended:
- (e) Has not made an assignment or transfer of property for the purpose of rendering himself eligible under this act at any time within five (5) years immediately prior to the filing of application for assistance pursuant to the provisions of this act;
- (f) Is not receiving aid to dependent children, aid to needy blind, or aid to the permanently and totally disabled, or medical aid for the aged, for himself or herself.

History: En. Sec. 2, Part 3, Ch. 82, L. 1937; Subd. (g) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 15, Ch. 199, L. 1951; amd. Sec. 18, Ch. 212, L. 1965; amd. Sec. 6, Ch. 261, L. 1971; amd. Sec. 1, Ch. 294, L. 1971.

Compiler's Note

Section 71-402 was amended twice in 1971, once by Ch. 261, §6 (approved March 10, 1971) and once by Ch. 294, §1 (approved March 11, 1971, effective upon passage and approval). Ch. 294 contained a clause repealing all conflicting acts and parts of acts. The compiler has incorporated the changes made by both sections. Ch. 294 removed the residence requirement for persons applying for old age assistance. Ch. 261 added "however, this does not preclude . . . 71-1524, as amended" as shown in subdivision (d).

Collateral References

Paupers 19(7), 43; Social Security and Public Welfare 41-51.
70 C.J.S. Paupers § 32; 81 C.J.S. Social Security and Public Welfare §§ 17-21.
48 Am. Jur. 542, Social Security, Un-

employment Insurance and Retirement Funds, § 40.

Constitutionality of poor relief law, as affected by requirement as to period of residence as condition of relief. 132 ALR

Requisite residence for purpose of old age assistance. 43 ALR 2d 1427.

71-403. Amount of assistance. The amount of old-age assistance granted any person shall be determined by the county department of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act.

History: En. Sec. 3, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 47, L. 1949; amd. Sec. 16, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seq.

Does Not Satisfy Constitutional Requirement of an "Appropriation Made by Law"

While section 34, article V of the constitution providing that no money shall be paid out of the state treasury except upon "appropriations made by law" does not require the introduction of an appropriation bill (salaries fixed by law being an example), and is satisfied if the people have expressed an intention that the money in question be paid, the mere duty of the legislature to make adequate appropriations for what it requires to be done (such as the standard it set up in this section for payment to qualified recipients) does not constitute an appropriation "made by law," any more than a promise of the government to pay money or make an appropriation. State ex rel. Dean v. Brandjord, 108 M 447, 453, 92 P 2d 273.

Effect of Legislative Appropriation on Grants

Where a recipient of old-age assistance applied for writ of mandate to compel payment of the full amount of monthly assistance originally fixed, irrespective of a reduction ordered by the state board because of an insufficient appropriation by the legislature, the writ was denied on the ground that the standard, set up in this section for payment to qualified recipients, does not constitute an appropriation "made by law" in excess of the specific appropriation made by the legislature, hence it is the duty of the state board under the Welfare Act to adopt a policy which will best subserve the cause of assistance within the appropriation furnished it, in its discretion. State ex rel. Dean v. Brandjord, 108 M 447, 455, 461, 92 P 2d 273, distinguished in 114 M 380, 382, 136 P 2d 991.

Collateral References

Social Security and Public Welfare = 77.

81 C.J.S. Social Security and Public Wefare § 25.

71-404. Application for assistance. Application for assistance under this chapter shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply for old-age assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 213, L. 1943; amd. Sec. 17, Ch. 199, L. 1951.

Collateral References

Social Security and Public Welfare 58.

81 C.J.S. Social Security and Public Welfare § 24.

71-405. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved old-age assistance grants paid by the state department to persons in the county each month, exclusive of the federal share. Each county department shall reimburse the state department in the amount of one-half $(\frac{1}{2})$ of the approved old-age assistance vendor medical payments on behalf of persons in the county each month, exclusive of the federal share. Such reimbursements shall be credited to the old-age assistance account of the state department.

History: En. Sec. 5, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 69, L. 1947; amd. Sec. 1, Ch. 155, L. 1949; amd. Sec. 18, Ch. 199, L. 1951; amd. Sec. 3, Ch. 71, L. 1957; amd. Sec. 1, Ch. 5, L. 1961; amd. Sec. 19, Ch. 212, L. 1965.

Collateral References

Social Security and Public Welfare 91.

81 C.J.S. Social Security and Public Welfare § 28.

71-406. Investigation of applications. Whenever a county public welfare department receives an application for an old-age assistance grant or for medical care on behalf of an old-age assistance recipient, an investigation shall be promptly made. The investigation of each applicant for old-age assistance shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the assistance and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 6, Part 3, Ch. 82, L. 1937; amd. Sec. 19, Ch. 199, L. 1951; amd. Sec. 20, Ch. 212, L. 1965.

Collateral References

Social Security and Public Welfare 70.

81 C.J.S. Social Security and Public Welfare § 24.

71-407. Reinstatement of recipients of old-age assistance, when. Any recipient of old-age assistance who may be temporarily employed, whose old-age assistance has been discontinued because of such employment, shall upon termination of such temporary employment be immediately reinstated on the relief rolls for old-age assistance, provided, however, that such recipient is otherwise eligible.

History: En. Sec. 1, Ch. 46, L. 1945.

71-408. Funeral expenses. Upon the death of a person who has been receiving old-age assistance, funeral expenses shall be paid by the board of county commissioners from the county poor fund, if the estate of the deceased is insufficient to pay the same. Grants from the old-age assistance account are not allowable for funeral expenses.

History: En. Sec. 7, Part 3, Ch. 82, L. 1937.

Collateral References

Social Security and Public Welfare 76.

81 C.J.S. Social Security and Public Welfare § 25.

71-409. Assistance may be paid to guardian. If the person receiving old-age assistance is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian, and shall then direct that the old-age

assistance payments be paid to the guardian for the benefit of such irresponsible recipient.

History: En. Sec. 8, Part 3, Ch. 82, L. 1937.

Collateral References

Social Security and Public Welfare 75.

81 C.J.S. Social Security and Public Welfare § 25.

71-410. Subsequent increase of income. If, at any time during the continuance of old-age assistance, the recipient thereof or the husband or wife (if living together) of the recipient, becomes possessed of any property or income in excess of the amount enjoyed at the time of the granting of the assistance, it shall be the duty of the recipient immediately to notify the county department of the receipt and possession of such property or income, and the county board may, on inquiry, either cancel the assistance or vary the amount thereof in accordance with circumstances, any excess assistance heretofore paid shall be returned to the state and the county in proportion to the amount of the assistance paid by each respectively, and be recoverable as a debt due the state and the county. Provided however, when federal law or regulations permit that any amounts in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be deemed to be additional property or income under this section.

If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 9, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 46, L. 1949; amd. Sec. 1, Ch. 105, L. 1959.

Collateral References

Welfare §§ 18, 25.

Social Security and Public Welfare 579.
81 C.J.S. Social Security and Public

71-411. Periodic review of assistance grants. All old-age assistance grants made under this act shall be reviewed and reconsidered by the county department as frequently as may be required by the rules and regulations of the state department. After such further investigation as the county board may deem necessary or the state board may require, the amount and manner of giving the assistance may be changed or the assistance may be withdrawn if such authority finds that the recipient's circumstances have changed sufficiently to warrant such action. It shall be within the power of the county board at any time to cancel and revoke assistance for cause, and it may for cause suspend payments for assistance for such periods as it may deem proper, subject to review or final approval by the state department.

History: En. Sec. 10, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 213, L. 1943.

Collateral References

Social Security and Public Welfare 80.

81 C.J.S. Social Security and Public Welfare § 26.

71-412. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of old-age assistance, the state board of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act. No claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent, as a home.

Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old-age assistance and recorded subsequent to his having received such assistance shall be presumed to have been made without fair consideration as the term "fair consideration" is defined by section 29-103, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 11, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 178, L. 1943; amd. Sec. 1, Ch. 63, L. 1947; amd. Sec. 1, Ch. 234, L. 1953.

Collateral References

Social Security and Public Welfare 92, 93, 95.

81 C.J.S. Social Security and Public Welfare §§ 29, 33.

Right of public to reimbursement from recipient, his estate or relatives, of old age assistance payments. 29 ALR 2d 731.

DECISIONS UNDER FORMER LAW

Operation and Effect

The state department of public welfare was entitled to share in deceased old-age recipient's estate exceeding value of \$500 as shown by inventory and appraisement,

and where such excess was more than sufficient to pay department's claim, it should have been allowed and paid in full. In re Bierman's Estate, 118 M 481, 167 P 2d 350, 352.

71-413. Change of residence of person receiving old-age assistance. A recipient who moves to another county in this state shall continue to receive assistance, with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 12, Part 3, Ch. 82, L. 1937; amd. Sec. 20, Ch. 199, L. 1951.

Collateral References Social Security and Public Welfare 42. 81 C.J.S. Social Security and Public Welfare § 17.

CHAPTER 5

PUBLIC WELFARE ACT PART 4-TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-501. "Dependent child" defined. 71-502. "Aid to dependent children" defined.

71-503. Administration.

71-504. Eligibility for assistance in aid to dependent children.

71-505. Application for assistance. 71-506. Investigation of application Investigation of applications.

71-507. Granting of assistance and amount of assistance.

71-508. County share of participation.

71-508.1. Federal funding.

71-509. Periodic reconsideration and changes in amount of assistanceappointment of guardian or payment to another person.

71-510. Removal to another county.

71-501. "Dependent child" defined. The term "dependent child" means a child (A) under the age of eighteen (18), or (B) under the age of twenty-one (21) who is a student under the regulations prescribed by the state welfare department and such children (A and B above) who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

Aid to dependent children shall not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of the state of Montana by the fact that such child is living in the home of his or her father, who is in the opinion of the county board of public welfare of the appropriate county either unemployable or who is honestly and responsibly seeking proper employment and is unable to find such employment nor by the fact that such child is living in the home of a head of a household who is, at the time, receiving job training under the laws of the state of Montana; nor shall the benefits which would otherwise accrue to such child for aid to dependent children under the laws of the state of Montana be reduced by reason of any such cause.

Primary factors in determining whether or not a father is honestly and responsibly seeking employment shall include his willingness to register for employment with the Montana state employment service if the Montana state employment service has a representative in his county of residence and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

The department of public welfare may establish additional criteria for determining whether or not a father is honestly and responsibly seeking employment.

History: En. Subd. (a) Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971.

Compiler's Note

The text of this section set forth above becomes effective July 1, 1972. The law until that time, or in any year in which the state receives less than \$400,000 in federal funds for ADC purposes (see sec. 71-508.1), is as follows: "71-501. "Dependent child" defined. The term 'dependent child' means a child (A) under the age of eighteen (18), or (B) under the age of twenty-one (21) who is a student under the regulations prescribed by the state welfare department and such children (A and B above) who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of such relatives as his or their own home.

"Aid to dependent children shall not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of the state of Montana by the fact that such child is living in the home of his or her father, who

is in the opinion of the county board of public welfare of the appropriate county unemployable nor by the fact that such child is living in the home of a head of a household who is, at the time, receiving job training under the laws of the state of Montana; nor shall the benefits which would otherwise accrue to such child for aid to dependent children under the laws of the state of Montana be reduced by reason of either such cause."

Cross-References

Day care facilities, sec. 10-801 et seq. Dependent and neglected children, secs. 10-505, 10-507.

Foster home licenses, secs. 10-521 to 10-523.

Operation and Effect

Where department of public welfare to which court awarded minor children on ground that the children were dependent and neglected refused to give its consent to adoption of children, court could not make an adoption order since the department was in loco parentis to the children. State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

Collateral References

Social Security and Public Welfare 191-204.

81 C.J.S. Social Security and Public Welfare §§ 56-66.

71-502. "Aid to dependent children" defined. The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children including money payments or payments made for medical care for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month. The term "aid to dependent children" shall also include emergency assistance to families with children as provided by the Federal Social Security Act.

History: En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957; amd. Sec. 1, Ch. 292, L. 1971.

NOTE.—The Federal Social Security Act referred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seq.

71-503. Administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to dependent children under the powers, duties and functions as prescribed in sections 71-201 to 71-232.

- (b) The county department of public welfare shall be charged with the local administration and supervision of aid to dependent children, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.
- (c) It is hereby mandatory and required that the state plan and operation of aid to dependent children shall be in effect in each and every county of the state and the administration and supervision of aid to dependent children shall be uniform throughout the several counties of the state.
- (d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare department blanks of applications, reports and such other forms as may be necessary in relation to aid to dependent children.
- (e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this chapter.
- (f) The state department shall co-operate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.
- (g) The state department shall make such reports in such form and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.
- (h) The state department shall publish an annual report and such interim reports as may be necessary or required.
- (i) The county department of public welfare shall administer the provisions of this chapter in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this chapter.
- (j) The county department of public welfare shall give prompt notice to appropriate law enforcement officials of the furnishing of aid to dependent children to a child who has been deserted or abandoned by a parent.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951.

- 71-504. Eligibility for assistance in aid to dependent children. Assistance shall be granted under this chapter to any dependent child—as defined in section 71-501—who:
 - (a) Is in need of such assistance;
- (b) Is residing in the state on the date the application is filed. A relative whose needs are included in a grant must meet the same residence

requirements as does the child concerned. Any dependent child or relative with whom the child is living meeting the above requirements shall be entitled to the assistance herein provided for, but the state shall pay the full amount of such assistance exclusive of the federal share unless and until the child and/or the relative with whom the child is living has been a resident of the county for a period of one (1) year.

History: En. Sec. 3, Part 4, Ch. 82, L. 1937; Subds. (d) and (e) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 148, L. 1947; amd. Sec. 1, Ch. 50, L. 1949; amd. Sec. 22, Ch. 199, L. 1951; amd. Sec. 1, Ch. 90, L. 1971.

Collateral References

Paupers 19(7), 20(4), 43; Social Security and Public Welfare 194.

70 C.J.S. Paupers §§ 32, 37; 81 C.J.S. Social Security and Public Welfare § 63.

See 47 Am. Jur. 2d 983, Juvenile Courts and Delinquent and Dependent Children, generally.

Constitutionality of poor relief law, as affected by requirement as to period of residence as condition of relief. 132 ALB 518.

71-505. Application for assistance. Application for assistance under this chapter shall be made to the county department of the county in which the dependent child is residing. Such application shall be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if they reside with the same person. All individuals wishing to make application for this assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 4, Ch. 82, L. 1937; amd. Sec. 3, Ch. 213, L. 1943; amd. Sec. 23, Ch. 199, L. 1951.

71-506. Investigation of applications. Whenever a county department receives a notification of the dependency of a child or an application for assistance, an investigation shall be promptly made. The investigation of each application for aid to dependent children shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the child is eligible for and should receive a grant, the amount of assistance and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 5, Part 4, Ch. 82, L. 1937; amd. Sec. 24, Ch. 199, L. 1951.

71-507. Granting of assistance and amount of assistance. The amount of aid to dependent children granted in any case shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act.

History: En. Sec. 6, Part 4, Ch. 82, L. 1937; amd. Sec. 25, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seq.

Collateral References 70 C.J.S. Paupers § 69; 81 C.J.S. Social Paupers 41, 43(2); Social Security and Public Welfare § 63. Public Welfare 194.

71-508. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved aid to dependent children grants exclusive of the federal share, provided, however, whenever the state appropriation to fund the state's share of the grants, to families with unemployed fathers who are honestly and responsibly seeking employment, is insufficient to fully fund the state's share of such grants and such funding, if any, has been depleted, then the county, if any, which would be responsible for extending aid to dependent children to such families, shall reimburse the state department in the full amount granted to such family, exclusive of the federal share and exclusive of any costs to the state for participation by any such family in any and all federal or state work incentive programs and retraining programs and exclusive of any costs to the state for any such payments made to persons for whom the state is responsible. The state department, on receiving any appropriation for funding the unemployed father families payments, shall allocate such funds for such program so that it may be determined when, if at all, such funds as are appropriated for such program are depleted.

History: En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957; amd. Sec. 1, Ch. 7, L. 1961; amd. Sec. 2, Ch. 292, L. 1971; amd. Sec. 2, Ch. 373, L. 1971.

NOTE.—The text of this section set forth above (amendment by Ch. 373, L. 1971) becomes effective July 1, 1972. The law until that time (amendment by Ch. 292, L. 1971) or in any year in which the state receives less than \$400,000 in federal funds for ADC purposes (see sec. 71-508.1) is as follows: "71-508. County share of participation. Each county de-

partment shall reimburse the state department in the amount of one-third (1/2) of the approved aid to dependent children grants paid by the state department to persons in the county each month exclusive of the federal share, except in the case of emergency assistance grants made to or in behalf of families with children, as provided in section 71-502, in which case each county department shall reimburse the state department in the full amount granted to such persons exclusive of the federal share. These reimbursements shall be credited to the aid to dependent children account of the state department.

71-508.1. Federal funding. The provisions of this act shall be effective only in those years in which the state of Montana shall receive in excess of four hundred thousand dollars (\$400,000) federal funds designated for the specific purpose of funding this act.

History: En. Sec. 3, Ch. 373, L. 1971.

Compiler's Notes.

The words "this act" refer to sections 71-501, 71-508 and 71-508.1.

Section 4 of Ch. 373, Laws 1971 read "This act shall be effective July 1, 1972."

71-509. Periodic reconsideration and changes in amount of assistance—appointment of guardian or payment to another person. All assistance grants made under this chapter shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department

may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the child's circumstances have altered sufficiently to warrant such action, provided, however, that if the county department, after investigation, finds that any recipient is not utilizing the grant adequately for the needs of the child or children or is dissipating such grant, or refuses or fails to accept employment or training and payments made to him would not be used in the best interests of the child or children; the county department may request the county attorney to file a petition in the district court for the appointment of such recipient as guardian of the assistance grant in behalf of the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the county department not less than five (5) days before the date set for such hearing; such petition may be filed with the clerk of the district court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interests of the child or children, and all parties concerned, that such guardian be appointed, he shall order such appointment, and may require such guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such times as the court may deem advisable.

It is the intention of this act that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown. In lieu of said guardianship proceedings, payments may be made in behalf of the child or children to another person found by the department to be interested in or concerned with the welfare of such needy child or children in accordance with the rules and regulations established by the state department.

Providing however, when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act. Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the state department of public welfare, running in favor of the needy individual and the state of Montana, conditioned upon the faithful use by such other person of the funds for the welfare of the said needy individual. Such bond shall be in an amount equal to six (6) times the amount of the monthly payment involved.

History: En. Sec. 8, Part 4, Ch. 82, L. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. 351, L. 1969.

71-510. Removal to another county. A recipient of aid to dependent children who moves to another county in the state shall continue to receive

assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 9, Part 4, Ch. 82, L. 1937; amd. Sec. 26, Ch. 199, L. 1951.

Collateral References

Paupers 21; Social Security and Public Welfare 194.

70 C.J.S. Paupers § 38; 81 C.J.S. Social Security and Public Welfare § 63.

CHAPTER 6

PUBLIC WELFARE ACT PART 5—TO PROVIDE FOR AID TO NEEDY BLIND INDIVIDUALS IN CONFORMITY WITH TITLE 10 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-601. Definitions.

71-602. Administration.
71-603. Powers and duties of state blind commission devolve upon state department of public welfare.

71-604. Eligibility for aid to needy blind.

71-605. Amount of assistance.71-606. Application for assista

Application for assistance. 71-607. Investigation of applications.

71-608. Repealed.

71-609. Periodic reconsideration and changes in amount of assistance. 71-610. Expenses for treatment.

71-611. County share of participation.

71-612. Change of residence of person receiving aid to blind. 71-613. Recovery from a recipient. 71-614. Assistance may be paid to guardian.

71-601. **Definitions.** As used in this title:

- (a) "Aid to blind" (or assistance) means money payments to or payments made for medical care in behalf of blind persons in need.
- (b) "Supplementary services" means services other than money payments.
- "Ophthalmologist" means a physician licensed to practice medicine in the state of Montana and who is actively engaged in the treatment of diseases of the human eye.
- "Optometrist" means a practitioner licensed to practice optometry in the state of Montana and who is actively engaged in such practice.

History: En. Sec. 1, Part 5, Ch. 82, L. 1937; amd. Sec. 1, Ch. 157, L. 1951; amd. Sec. 7, Ch. 71, L. 1957.

Collateral References

Social Security and Public Welfare 221-229.

81 C.J.S. Social Security and Public Welfare §§ 67-72.

Cross-Reference

Privileges of blind persons, sec. 71-1301 et seq.

71-602. Administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to blind under the powers, duties and functions as prescribed in sections 71-201 to 71-232.

- (b) The county department of public welfare shall be charged with the local administration and supervision of aid to blind, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.
- (c) It is hereby mandatory and required that the state plan and operation of aid to the blind shall be in effect in each and every county of the state and the administration and supervision of aid to the blind shall be uniform throughout the several counties of the state.
- (d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to aid to the blind.
- (e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this chapter.
- (f) The state department shall co-operate with the federal government in matters of mutual concern pertaining to assistance to the blind, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.
- (g) The state department shall make such reports in such forms and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the corrections and verification of such reports.
- (h) The state department shall publish an annual report and such interim reports as may be necessary or required.
- (i) The county department of public welfare shall administer the provisions of this chapter in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this chapter.
- (j) The state department shall designate the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance.
- (k) The state department shall promulgate rules and regulations stating, in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this chapter.
- (1) The state department shall designate a suitable number of ophthal-mologists, duly licensed to practice medicine in Montana and actively engaged in the treatment of diseases of the human eye, to examine applicants and recipients of assistance to the blind. The state department shall designate a suitable number of optometrists, duly licensed to practice optometry in Montana and actively engaged in such practice, to examine applicants and recipients of assistance to the blind.

(m) The state department shall fix and pay to ophthalmologists fees for examinations of applicants and recipients. The state department shall fix and pay to optometrists fees for examinations of applicants and recipients.

History: En. Sec. 2, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 157, L. 1951.

71-603. Powers and duties of state blind commission devolve upon state department of public welfare. That it is hereby declared to be the intention of the legislative assembly that the powers and duties heretofore conferred upon the state blind commission as provided in chapter 42 of the Laws of 1939 shall hereafter devolve upon the state department of public welfare as provided in chapter 82 of the Laws of 1937 and acts amendatory thereof. It is the expressed intention of the legislature that if chapter 42 be regarded as repealing any part of chapter 82 of the Laws of 1937 by implication or otherwise, that the provisions of chapter 82 of the Laws of 1937, and acts amendatory thereof, shall be and are hereby revived.

History: En. Sec. 2, Ch. 55, L. 1943. NOTE.—Chapter 42, Laws 1939, referred to above, was repealed by Sec. 1, Ch. 55, Laws 1943. Chapter 82, Laws 1937, was the original enactment of the Public Welfare Act.

- 71-604. Eligibility for aid to needy blind. Aid shall be granted under this chapter to any person who:
- (a) Has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who has been examined and so certified by a fully licensed optometrist;
- (b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health except that in determining need, the department may disregard earned income, as is provided in the Federal Social Security Act;
- (c) Is not receiving old-age assistance, aid to dependent children or aid to the permanently and totally disabled, for himself or herself;
- (d) Any person otherwise qualified who has no legal county residence shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in said county. If a recipient moves from one county to another county, he shall retain residence in the original county until he has resided in the second county for a period of one (1) year at which time he will gain residence in the second county;
- (e) Is not an inmate of any public institution except as a patient in a public medical institution; is not a patient in an institution for tuberculosis or mental diseases or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis; however, this does not preclude medical payments made to any institution in behalf of any eligible resident thereof.

History: En. Sec. 3, Part 5, Ch. 82, L. 1943; Subd. (g) rep. Sec. 9, Ch. 213, L. 1937; Subd. (c) amd. Sec. 4, Ch. 213, L. 1943; amd. Sec. 1, Ch. 81, L. 1949; amd.

Sec. 3, Ch. 157, L. 1951; amd. Sec. 27, Ch. 199, L. 1951; amd. Sec. 1, Ch. 4, L. 1961; amd. Sec. 7, Ch. 261, L. 1971; amd. Sec. 1, Ch. 378, L. 1971.

NOTE.—The Federal Social Security Act referred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seq.

Compiler's Note

Section 71-604 was amended twice in 1971, once by Ch. 261, § 7 (approved March 10, 1971) and once by Ch. 378, § 1 (approved March 15, 1971, effective upon passage and approval). Ch. 378 contained a clause repealing all conflicting acts and parts of acts. The compiler has

incorporated the changes made by both sections. Ch. 378 removed the residence requirement for persons applying for assistance. Ch. 261 added "however... resident thereof" at the end of subdivision (e).

Collateral References

Social Security and Public Welfare 223-225.

81 C.J.S. Social Security and Public Welfare § 69.

Constitutionality of poor relief law, as affected by requirement as to period of residence as condition of relief. 132 ALR 518

71-605. Amount of assistance. The amount of aid to needy blind granted any person shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act. The state department may, however, authorize grants or supplementary grants from state funds to be used in supplementary services such as the prevention or treatment of blindness.

History: En. Sec. 4, Part 5, Ch. 82, L. 1937; amd. Sec. 8, Ch. 117, L. 1941; amd. Sec. 8, Ch. 213, L. 1943; amd. Sec. 3, Ch. 47, L. 1949; amd. Sec. 28, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section is compiled in the United States Code as Tit. 42, sec. 301 et seq.

71-606. Application for assistance. Application for assistance under this chapter shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply shall have the opportunity to do so

History: En. Sec. 5, Part 5, Ch. 82, L. 1937; amd. Sec. 5, Ch. 213, L. 1943; amd. Sec. 29, Ch. 199, L. 1951.

Collateral References

Social Security and Public Welfare 226.

81 C.J.S. Social Security and Public Welfare §§ 69, 72.

71-607. Investigation of applications. Whenever a county public welfare department receives an application for assistance under this chapter an investigation shall be promptly made. The investigation of each application for aid to needy blind shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application, providing however when federal law or regulations permit that

any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

History: En. Sec. 6, Part 5, Ch. 82, L. Sec. 30, Ch. 199, L. 1951; amd. Sec. 1, Ch. 1937; amd. Sec. 4, Ch. 157, L. 1951; amd. 153, L. 1959.

71-608. Repealed—Chapter 199, Laws of 1951.

Repeal

Section 71-608 (Sec. 7, Part 5, Ch. 82, L. 1937), relating to granting of aid, was

repealed by Sec. 31, Ch. 199, Laws 1951. For present provisions, see sec. 71-607.

71-609. Periodic reconsideration and changes in amount of assistance. All assistance grants made under this chapter shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the person's circumstances have altered sufficiently to warrant such action.

A recipient shall submit to a re-examination as to his eyesight when required to do so by the state department. He shall also furnish any information required by the state department.

History: En. Sec. 8, Part 5, Ch. 82, L. 1937.

71-610. Expenses for treatment. On the basis of the findings of the ophthalmologist's examination, supplementary services may be authorized by the state department to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight whether or not he is blind, if he is otherwise qualified for assistance under this chapter. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the state department.

On the basis of the findings of an optometric examination, supplementary services may be authorized by the state department to any applicant or recipient who is in need of optometric services, if he is otherwise qualified for assistance under this chapter. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the state department.

History: En. Sec. 9, Part 5, Ch. 82, L. 1937; amd. Sec. 1, Ch. 155, L. 1971.

Collateral References

Paupers 48; Social Security and Public Welfare 227.

70 C.J.S. Paupers § 74; 81 C.J.S. Social Security and Public Welfare § 70.

71-611. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved aid to needy blind grants paid by the state department to persons

in the county each month, exclusive of the federal share. Such reimbursement shall be credited to the aid to needy blind account of the state department.

History: En. Sec. 10, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 69, L. 1947; amd. Sec. 2, Ch. 155, L. 1949; amd. Sec. 32, Ch.

199, L. 1951; amd. Sec. 8, Ch. 71, L. 1957; amd. Sec. 1, Ch. 8, L. 1961.

71-612. Change of residence of person receiving aid to blind. A recipient who moves to another county in the state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 11, Part 5, Ch. 82, L. 1937; amd. Sec. 6, Ch. 213, L. 1943; amd. Sec. 33, Ch. 199, L. 1951.

Collateral References

Paupers 21; Social Security and Public Welfare 221.

70 C.J.S. Paupers § 38; 81 C.J.S. Social Security and Public Welfare § 67.

71-613. Recovery from a recipient. If at any time during the continuance of aid to blind assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient immediately to notify the county department of the receipt or possession of such property or income and the county department may, after investigation, either cancel the assistance or alter the amount thereof in accordance with the circumstances.

Any assistance paid after the recipient has come into possession of such property or income and in excess of his need shall be recoverable by the state as a debt due to the state.

History: En. Sec. 12, Part 5, Ch. 82, L. 1937.

71-614. Assistance may be paid to guardian. If the person receiving aid to blind is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian, and shall then direct that the aid to blind payments be paid to the guardian for the benefit of such irresponsible recipient.

History: En. Sec. 13, Part 5, Ch. 82, L. 1937.

CHAPTER 7

PUBLIC WELFARE ACT PART 6—TO PROVIDE FOR SERVICES FOR CRIPPLED CHILDREN AND CHILD WELFARE SERVICES, IN CONFORMITY WITH TITLE 5, PARTS 2 AND 3 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935, OR AS AMENDED, AND TRANSFERRING THE POWERS AND DUTIES OF THE STATE BUREAU OF CHILD PROTECTION AND THE ORTHOPEDIC COMMISSION TO THE AUTHORITY AND SUPERVISION OF THE STATE DEPARTMENT OF PUBLIC WELFARE

Section 71-701 to 71-705. Repealed.

71-706. Definitions as used in this chapter.

71-707. Organization and administration of activities. 71-708. Powers and duties of the state department. 71-709. Duty to strengthen child welfare services.
71-710. Child rehabilitation.
71-711. Other supervision of children.

71-712. Accept custody of children committed by courts.

71-713. Recognition of parental control of children-assistance to other departments.

71-714. Duties of county board.

71-701 to 71-705. Repealed—Chapter 264, Laws of 1955.

Sections 71-701 to 71-705 (Sec. 1, Part 6, Ch. 82, L. 1937; Secs. 1 to 4, Ch. 126, L. 1941), relating to the division of

services for crippled children and the effective date for the transfer of the bureau of child protection, were repealed by Sec. 28, Ch. 264, Laws 1955.

- 71-706. Definitions as used in this chapter. (a) Child welfare services mean: The establishing, extending and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent.
- Child welfare worker means: Staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the state department of public welfare.

History: En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955.

Collateral References Infants©=12 et seq.

43 C.J.S. Infants § 4 et seq. 42 Am. Jur. 2d 20 et seq., Infants, § 14 et seq.

71-707. Organization and administration of activities. Child welfare services and child protection functions shall be organized under and administered and supervised by the state department of public welfare, subject to the general administration and regulations of the state department and the powers and duties thereof as established in sections 71-201 to 71-232, and providing for co-operation and exchange of services with the state board of health and vocational rehabilitation bureau of the state of Montana.

History: En. Sec. 3, Part 6, Ch. 82, L. 1937; amd. Sec. 26, Ch. 264, L. 1955.

71-708. Powers and duties of the state department. Subject to the authority and regulations of the state department and in co-operation with the federal children's bureau, the state department shall:

- (a) Select and appoint, from a qualified list, such personnel as are necessary to efficiently supervise and perform the purposes of this chapter.
- (b) Subject to the approval of the state board, make such rules and regulations as are necessary to carry out the purposes of this chapter.
- (c) Administer or supervise all child welfare activities of the state except such child welfare activities as are administered by the state board of health.

History: En. Subd. (a), (b), (c), (d), Sec. 4, Part 6, Ch. 82, L. 1937; Subd. (a) rep. Sec. 10, Ch. 117, L. 1941.

71-709. Duty to strengthen child welfare services. The state department shall make provision for establishing and strengthening child welfare services, including protective services and for care of children in family foster homes. When funds are available for that purpose, the child welfare division shall have the right to make agreements for the payment of compensation for keeping children in family foster homes subject to the approval of the state department.

History: En. Subd. (e), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 19, Ch. 129, L. 1939.

71-710. Child rehabilitation. The state department shall:

- (a) Enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected and delinquent children where adequate provision therefor has not been made by law; and to use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law; and co-operate for the purposes hereof with all reputable child helping and child placing agencies.
- (b) Inspect, license and supervise public and private infants' homes, child earing and child placing institutions and agencies.

History: En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955.

Cross-References

Day care facilities, sec. 10-801 et seq. Dependent and neglected children, secs. 10-505, 10-506.

Foster home licenses, secs. 10-521 to 10-523.

71-711. Other supervision of children. The state department shall supervise the importation and exportation of children.

History: En. Subd. (i), Sec. 4, Part 6, Ch. 82, L. 1937.

71-712. Accept custody of children committed by courts. The state department shall accept the guardianship or custody of children committed by the courts to the state department and arrange for their care in family

foster homes or otherwise in co-operation with county departments of public welfare.

History: En. Subd. (j), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 20, Ch. 129, L.

71-713. Recognition of parental control of children—assistance to other departments. Nothing in this act shall be construed as authorizing any state or county official, agent or representative, in carrying out any of the provisions of this act, to take charge of any child over the objection of either of the parents of such child, or the person standing in loco parentis to such child, except pursuant to a proper court order.

The state department shall assist other departments, agencies and public and private institutions of the state and federal government when so requested, by performing services in conformity with the purposes of this chapter, and particularly such services and duties as may be assigned to it by any state board composed of state officers; provided such services and duties are legally within the duties of such state board.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937.

71-714. Duties of county board. The county board of public welfare shall supervise the local administration of child welfare services under the powers and duties set forth in sections 71-201 to 71-232, and subject to the rules and regulations of the state department.

Regular staff workers of the county department will handle the work of child welfare services in the county. Where such personnel are not qualified to handle the work of child welfare services, the state department will arrange for the services of such special child welfare workers as are necessarv.

History: En. Sec. 5, Part 6, Ch. 82, L. 1937.

CHAPTER 8

PUBLIC WELFARE ACT—PART 7 (ONLY SEC. 1 OF PART 7 OF THE PUBLIC WELFARE ACT IS GIVEN IN THIS COMPILATION. THE REPEALING AND SEVERABILITY CLAUSES ARE OMITTED.)

Section 71-801. Title of act.

71-801. Title of act. This act may be cited as the "Public Welfare Act."

History: En. Sec. 1, Part 7, Ch. 82, L. 1937.

CHAPTER 9

PUBLIC WELFARE ACT PART 8-APPROPRIATIONS, DISPOSITION OF FUNDS AND DISBURSEMENTS

Section 71-901. Receipt of funds.

71-902. Source of state appropriation.

71-903. Method of disbursement. 71-904. Transfer of funds from specific accounts.

71-901. Receipt of funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money appropriated by the legislature for public welfare purposes, all money received from the United States government for public welfare purposes, and all money received from any other source for the purposes set forth in the Public Welfare Act shall be paid into the state treasury to the credit of the state department of public welfare.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963.

Collateral References
Paupers 11.
70 C.J.S. Paupers § 19.

71-902. Source of state appropriation. For carrying out the duties and obligations of the state department, for the performance of welfare services of the state, and for matching such federal funds as may be available for the aforesaid welfare services, the legislature shall make appropriation out of the general fund of the state for the various and separate activities of the state department and county departments of public welfare.

History: En. Sec. 2, Part 8, Ch. 82, L. 1937.

71-903. Method of disbursement. The state department of public welfare shall disburse all public assistance grants and costs of administration as provided for in each part of this act and all other expenditures authorized to be made by the department. The funds appropriated shall be made available for such disbursements in the following manner:

From the appropriations made, the state department of public welfare shall as soon as it finds that it needs the money, be provided with an imprest fund for each quarter of each fiscal year ordinarily not exceeding one-fourth of the appropriation made for the fiscal year; provided, however, that for good cause shown a larger portion than one-fourth of the appropriation for the fiscal year may be included in the imprest fund for any quarter. Any unexpended balance of the imprest fund made available for one quarter and remaining unexpended at the end of such quarter shall remain available for the use of the department for the succeeding quarter. The state department shall be responsible and liable to the state for all funds so received, and the department may divide the funds received among such specific accounts as it may deem necessary or desirable to establish.

In order to obtain money for the imprest fund, the department shall present claims to the state board of examiners; upon being approved by the state board of examiners and presented to the state auditor, the state auditor shall issue his warrant or warrants, and upon the receipt of such warrant or warrants the state treasurer shall disburse the amounts allowed to the state department of public welfare.

The state department shall establish and maintain a bank account or accounts properly safeguarded by the deposit of such securities as may be used by depositories as security for funds under the control of the state treasurer, and these securities shall be subject to the approval of the state examiner and the state board of public welfare. This account or ac-

counts shall be subject to checks or orders drawn by the state department for the payment of assistance grants, the cost of administration of the state and county departments and for all other expenditures authorized to be made by the department.

The appropriations made for the period beginning with March 2, 1939, and terminating with June 30, 1939, shall be made available through the method above indicated as rapidly as the state department finds that the funds are needed.

When any of the said funds are deposited in any bank or banks pursuant to the foregoing provisions and securities have been deposited to safeguard these deposits as above required, and the securities have been approved by the state examiner and by the state board of public welfare, the state department of public welfare and all its officers and employees shall be released from any liability to the state for any loss that might occur through the failure of the bank to repay such funds so deposited or any part thereof up to the full amount of the securities deposited.

History: En. Sec. 3, Part 8, Ch. 82, L. 1937; amd. Sec. 21, Ch. 129, L. 1939.

Collateral References Paupers 11: States 123. 70 C.J.S. Paupers § 19; 81 C.J.S. States § 156 et seq.

71-904. Transfer of funds from specific accounts. Any money appropriated or earmarked for any specific account or purpose not needed for such account or purpose may be transferred by the state board of public welfare to any other account or purpose under the authority of the state department of public welfare. This transfer shall be effective and deemed completed when the state board of public welfare has entered an order for such transfer upon its minutes and the state auditor has been notified of the action taken.

History: En. Sec. 5, Part 8, Ch. 82, L. 1937; amd. Sec. 22, Ch. 129, L. 1939.

CHAPTER 10

PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section 71-1001. Definitions.

71-1002. Administration.

Eligibility requirements for aid to persons having silicosis, as herein 71-1003. defined.

Amounts of payments. 71-1004. Application for payment. 71-1005. Investigation of applications. 71-1006.

71-1007.

Making payments. Conformity with acts of federal government. 71-1008.

Transfer of records and payrolls—benefits unimpaired by transfer of 71-1009. responsibility.

71-1001. Definitions. (a) "Payments" means money payments to persons having silicosis as herein defined.

"Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(c) "Examining board" shall mean well-qualified physician or physicians, as designated by the industrial accident board.

History: Sec. 1, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971.

Administration. (a) The industrial accident board of the state of Montana is hereby authorized and charged with the general supervision of this chapter under the powers, duties and functions as prescribed herein as amended.

All powers, duties and functions previously vested in the state department of public welfare in relation to this chapter are hereby transferred to the industrial accident board of the state of Montana.

- Any powers, duties or functions previously vested in the county departments of public welfare in relation to this chapter are hereby transferred to the industrial accident board of the state of Montana.
- The industrial accident board of the state of Montana shall formulate a plan and promulgate regulations for the operation of this chapter.
- The industrial accident board shall co-operate with the federal government in all matters of immediate concern pertaining to silicosis.
- The industrial accident board shall publish an annual report and interim reports as may be necessary or required or asked for by the governor.
- (i) The industrial accident board shall designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant.
- The industrial accident board shall designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter.
- The industrial accident board shall pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the board for that purpose.
- The industrial accident board shall develop and co-operate with other agencies in developing measures for the prevention of silicosis.

History: Sec. 2, Part 9, Ch. 82, L. 1937 Laws 1961, did not contain a subd. (d), as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961. (e), or (h).

Compiler's Note

Cross-Reference

Industrial Accident Board, sec. 92-101 This section, as amended by Ch. 225, et seq.

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payment shall be made under this act to any person who:

Has silicosis, as defined in section 71-1001, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but

shall mean any person having an income from any other source exceeding one hundred fifty dollars (\$150.00) per month.

- (b) Has resided in and been an inhabitant of the state of Montana for ten (10) years, or more, immediately preceding the date of the application.
- (c) If any person who is entitled to benefits under this act shall be an inmate in any Montana state institution, benefits shall not be paid to him, but shall be paid his beneficiary, if any, as defined in section 92-413.
- (d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Compensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of one hundred fifty-eight dollars and fifty cents (\$158.50) hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than one hundred fifty-eight dollars and fifty cents (\$158.50), then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, and one hundred fifty-eight dollars and fifty cents (\$158.50) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971.

Compiler's Notes

Section 71-1003 was amended twice in 1971, once by Ch. 105, §1 (approved March 1, 1971) and once by Ch. 360, §2 (approved March 15, 1971). The amendatory acts are not reconcilable. The amendment by Ch. 360 is incorporated in

subdivisions (a) through (c). The amendment by Ch. 105 is incorporated in subdivision (d) since Ch. 360 retained the references to \$140 in subdivision (d) without reconciling the inconsistency created by references to \$158.50 in sections 71-1004 and 71-1008, as amended by Ch. 105.

Chapter 155, Laws of 1959, referred to in subdivision (d), is the Occupational Disease Act compiled as sec. 92-1301 et seq. Chapter 360, the 1971 amendatory act, referred to compensation and payments "under the Workmen's Compensation Act..., as provided by chapter 260, Laws of 1969"; Chapter 260 was compiled as sections 71-1003 (this section), 71-1004 and 71-1008.

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the industrial accident board; been determined by the industrial accident board to be entitled to a payment under this chapter for silicosis, shall be granted a payment by the said industrial accident board of one hundred fifty-eight dollars and fifty cents (\$158.50) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd.

Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971.

Compiler's Note

See Compiler's Note under section 71-1003 with reference to 1971 amendment, raising the amount of payments from \$140 to \$158.50.

71-1005. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the industrial accident board. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the industrial accident board. The application form may be filled in and written by a person authorized by the industrial accident board. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: Sec. 5, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961.

71-1006. Investigation of applications. Whenever the industrial accident board under this chapter receives an application for a payment an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provision of this chapter, and such other information as may be required by the rules of the industrial accident board. The investigation of such applicant shall be conducted by representatives of the industrial accident board. The physicians or physician designated by the industrial accident board as herein provided shall constitute an examining board for such clinical, pathological, X-ray and Roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

History: Sec. 6, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961.

71-1007. Making payments. Upon the completion of such investigation the industrial accident board shall determine whether or not the applicant is entitled to a payment under this chapter. The board shall then notify the applicant of its decision.

History: Sec. 7, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the industrial accident board of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed one hundred fifty-eight dollars and fifty cents (\$158.50) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch.

Compiler's Note

See Compiler's Note under section 71-1003 with reference to 1971 amendment, raising amount of monthly payments from \$140 to \$158.50.

71-1009. Transfer of records and payrolls—benefits unimpaired by transfer of responsibility. It shall be the duty of the state department of public welfare to turn over and deliver to the industrial accident board all records and payrolls now held by the state department of public wel-

No person receiving benefits under this chapter shall be deprived of those benefits by reason of the transfer of the general supervision and total administration from the state department of public welfare to the industrial accident board of the state of Montana.

History: En. 71-1009 by Sec. 9, Ch. 225, L. 1961.

CHAPTER 11

SALE OF REAL PROPERTY HELD BY PUBLIC WELFARE DEPARTMENT

Section 71-1101. Determination of welfare board to sell real property.

71-1102. Approval by board of examiners.71-1103. Advertising for sale.

71-1104. Place and conditions of sale.

71-1105. Notice of sale—publication and contents.

71-1106. Approval of sale—convey 71-1107. Payment of costs of sale. Approval of sale-conveyance.

71-1101. Determination of welfare board to sell real property. Whenever a majority of all of the members of the state board of public welfare, at any regular or special meeting of such board, shall determine that it would be for the best interests of the state department of public welfare to sell any real property which it has acquired, or may acquire in the future, the title to which is in the state of Montana for the use and benefit of the state department of public welfare, a certified copy of said determination shall be transmitted to the state board of examiners.

History: En. Sec. 1, Ch. 23, L. 1947.

71-1102. Approval by board of examiners. Upon the receipt of such determination, the state board of examiners shall at its next or subsequent meeting or meetings give consideration to the determination made by the state board of public welfare, and if such determination is approved by a majority of the state board of examiners they shall so certify their approval to the commissioner of state lands.

History: En. Sec. 2, Ch. 23, L. 1947.

71-1103. Advertising for sale. The commissioner of state lands upon receipt of such certificate of approval shall forthwith proceed to advertise

and offer such real property for sale and sell the same as hereinafter provided.

History: En. Sec. 3, Ch. 23, L. 1947.

71-1104. Place and conditions of sale. All such sales as herein provided shall be only at public auction held at a designated room in the county courthouse in the county wherein the property to be sold is located, or on the property to be sold, in the discretion of the commissioner. All sales shall be for cash and subject to the approval of the state board of examiners.

History: En. Sec. 4, Ch. 23, L. 1947.

Collateral References

What constitutes a "public sale." 4 ALR 2d 575.

71-1105. Notice of sale—publication and contents. The commissioner shall cause a notice of every such sale to be given by publication in the official county paper of the county where the sale is to be held once each week through four consecutive weeks (five issues) next preceding the date of sale. Such notice shall give the day, date and time of day of the beginning of the sale; shall contain a description and location of the land to be sold, in the form which will advise the public of its location and area if it is unplatted property. The notice shall also give the terms and conditions of sale and such additional information as the commissioner may deem useful.

History: En. Sec. 5, Ch. 23, L. 1947.

71-1106. Approval of sale—conveyance. After the sale the commissioner shall make written report to state board of examiners of the sale and if the report is approved by a majority of such board a conveyance shall be executed to the purchaser on behalf of the state of Montana, by the governor and attested by the secretary of state.

History: En. Sec. 6, Ch. 23, L. 1947.

71-1107. Payment of costs of sale. All costs of advertising and conducting the sale shall be paid from the proceeds thereof and the residue deposited in the state treasury to the credit of the state department of public welfare.

History: En. Sec. 7, Ch. 23, L. 1947.

CHAPTER 12

PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

Section 71-1201. Provision for administration.

71-1202. Eligibility requirements for aid to the permanently and totally disabled.

Determination of permanent and total disability. 71-1203.

71-1204. Amount of assistance.

71-1205. Application for assistance. 71-1206. County share of participation. 71-1207. Investigation of applications.

71-1208. Redetermination of eligibility.

71-1209. Assistance may be paid to guardian.
71-1210. Change of residence of persons receiving aid to the permanently and totally disabled.

- 71-1201. Provision for administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to the permantly and totally disabled under the powers, duties and functions as prescribed in sections 71-201 through 71-232.
- (b) The county departments of public welfare are hereby charged with the local administration and supervision of aid to the permanently and totally disabled subject to the powers, duties and functions prescribed for the county departments in sections 71-201 through 71-232.
- (c) It is hereby mandatory and required that the state plan and operation of aid to the permanently and totally disabled shall be in effect in each and every county of the state and that the administration and supervision of aid to the permanently and totally disabled shall be uniform throughout the several counties of the state.
- (d) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.
- (e) Aid to the permanently and totally disabled, as used in this chapter, means money payments to or payments made for medical care in behalf of needy individuals eighteen (18) years of age or over who are permanently and totally disabled.

History: En. Sec. 1, Ch. 160, L. 1951; amd. Sec. 9, Ch. 71, L. 1957.

Collateral References
Paupers © 3.
70 C.J.S. Paupers § 3.
41 Am. Jur. 682, Poor and Poor Laws,
§ 3.

- 71-1202. Eligibility requirements for aid to the permanently and totally disabled. Aid to the permanently and totally disabled shall be granted any person who:
 - (a) Has attained the age of eighteen (18) years;
- (b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health;
- (c) Any person otherwise qualified who has no legal county residence shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in said county. If a recipient moves from one county to another county, he shall retain residence in the original county until he has resided in the second county for a period of one year at which time he will gain residence in the second county;
- (d) Is permanently and totally disabled as defined by the rules and regulations of the state department of public welfare;
- (e) Is not an inmate of a public institution, except as a patient in a public medical institution; is not a patient in an institution for tuber-

culosis or mental diseases, or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis; however, this does not preclude medical payments made to any institution in behalf of any eligible resident thereof;

(f) Is not receiving old-age assistance, aid to dependent children or aid to needy blind for himself or herself.

History: En. Sec. 2, Ch. 160, L. 1951; amd. Sec. 8, Ch. 261, L. 1971; amd. Sec. 1, Ch. 379, L. 1971.

Compiler's Note

Section 71-1202 was amended twice in 1971, once by Ch. 261, § 8 (approved March 10, 1971) and once by Ch. 379, § 1 (approved March 15, 1971, effective

upon passage and approval). Ch. 379 contained a clause repealing all conflicting acts and parts of acts. The compiler has incorporated the changes made by both sections. Ch. 379 removed the residence requirement for persons applying for assistance. Ch. 261 added "however... resident thereof" to subdivision (e).

71-1203. Determination of permanent and total disability. Determination of the existence of permanent and total disability shall be by competent medical, social work and other technical personnel in accordance with the rules and regulations of the state department.

History: En. Sec. 3, Ch. 160, L. 1951.

71-1204. Amount of assistance. The amount of aid to the permanently and totally disabled granted any person shall be determined by the county department of public welfare according to the rules and regulations and standards of assistance established by the state department.

History: En. Sec. 4, Ch. 160, L. 1951.

71-1205. Application for assistance. Application for assistance under this chapter shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 5, Ch. 160, L. 1951.

71-1206. County share of participation. Each county department shall reimburse the state department in the amount of two-thirds (2/3) of the approved aid to the permanently and totally disabled grants paid by the state department to persons in the county each month, exclusive of the federal share. Such reimbursements shall be credited to the aid to the permanently and totally disabled account of the state department.

History: En. Sec. 6, Ch. 160, L. 1951; amd. Sec. 10, Ch. 71, L. 1957; amd. Sec. 1, Ch. 6, L. 1961.

71-1207. Investigation of applications. Whenever the county department receives an application for aid to the permanently and totally disabled an investigation shall be promptly made. The investigation of each application for aid to the permanently and totally disabled shall be conducted by a staff worker of the county department. Each applicant shall

be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation, the staff of the county welfare department shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. The county public welfare board shall review the determination made by the staff of the county department. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application, providing, however, when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

History: En. Sec. 7, Ch. 160, L. 1951; amd. Sec. 1, Ch. 104, L. 1959.

71-1208. Redetermination of eligibility. All aid to the permanently and totally disabled cases approved under this chapter shall be reviewed as often as shall be required under the rules and regulations of the state department. The review shall include a redetermination of eligibility factors and the amount of payment.

History: En. Sec. 8, Ch. 160, L. 1951.

71-1209. Assistance may be paid to guardian. If the person receiving aid to the permanently and totally disabled is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian and shall then direct that the assistance payments be paid to the guardian for the benefit of such irresponsible recipient.

History: En. Sec. 9, Ch. 160, L. 1951.

71-1210. Change of residence of persons receiving aid to the permanently and totally disabled. A recipient who moves to another county in this state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer and the counties concerned shall abide by the rules and regulations of the state department which relate to the transfer of assistance payments.

History: En. Sec. 10, Ch. 160, L. 1951.

CHAPTER 13

PRIVILEGES OF BLIND AND PHYSICALLY DISABLED PERSONS

Section 71-1301. Leasing of concessions in public buildings—preferences to blind and physically disabled persons—assignment of lease prohibited.
71-1302. "Blind persons" defined.

71-1303. Short title.

71-1304. Policy of state.
71-1305. Use of white-colored canes restricted to blind.
71-1306. Right of blind person to be accompanied by guide dog in public places.

71-1307. Duty of pedestrian or driver approaching blind person. 71-1308. Canes—regulation of carrying—penalty.

71-1301. Leasing of concessions in public buildings—preferences to blind and physically disabled persons—assignment, of lease prohibited. Whenever any room, corridor or other part of, or space in any public building owned or controlled by the state of Montana, or any agency thereof, or owned or controlled by any county, city or other political subdivision of said state, shall be leased, licensed or otherwise made available to private persons for use as a vending stand or other similar commercial enterprise, blind persons and persons disabled by loss of limb or other physical impairment, shall have and be given the first right and preference to such commercial use thereof; provided, however, that every lease, license or other contract, which may be made pursuant to this act and for the purpose of allowing a preference to a blind or disabled person shall prohibit the transfer by sublease, assignment or otherwise of the right acquired; and provided further, that nothing herein contained shall be construed as a denial of the right to renew existing contracts held by persons who are not entitled to preference under this act.

History: En. Sec. 1, Ch. 66, L. 1951.

Cross-Reference

Aid to needy blind, sec. 71-601 et seq.

71-1302. "Blind persons" defined. For the purpose of this act, the term "blind person" shall mean one who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

History: En. Sec. 2, Ch. 66, L. 1951.

71-1303. Short title. This act may be cited as the "White Cane Act." History: En. Sec. 1, Ch. 181, L. 1971.

71-1304. Policy of state. It is the policy of the state to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the ablebodied, unless it is shown that the particular disability prevents the performance of the work involved.

History: En. Sec. 2, Ch. 181, L. 1971.

71-1305. Use of white-colored canes restricted to blind. No person, except those wholly or partially blind, shall carry or use on any street. highway or in any other public place, a cane or walking stick which is white in color, or white tipped with red.

History: En. Sec. 3, Ch. 181, L. 1971.

71-1306. Right of blind person to be accompanied by guide dog in public places. Every totally or partially blind person shall have the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places where the public are invited—hotels, motels, public conveyances, public eating places, and places of amusement—without being charged extra for the guide dog; provided that he shall be liable for any damage done to the premises or facilities by such dog.

History: En. Sec. 4, Ch. 181, L. 1971.

71-1307. Duty of pedestrian or driver approaching blind person. Any pedestrian who is not wholly or partially blind, or any driver of a vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick predominately white or metallic in color or white tipped with red or being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of said blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to the person wholly or partially blind.

History: En. Sec. 5, Ch. 181, L. 1971.

71-1308. Canes—regulation of carrying—penalty. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this act, contrary to the provisions of this act, or who shall fail to heed the approach of a person carrying such a cane as is described by this act, or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick, or being led by a trained guide dog, or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor, punishable by a fine not to exceed twenty-five dollars (\$25).

History: En. Sec. 6, Ch. 181, L. 1971.

CHAPTER 14

SERVICES TO THE BLIND

Section 71-1401. Definitions. 71-1402. Administrator. 71-1403. Supervisor-duties. Administration. 71-1404. 71-1405. Co-operation with federal government. Receipt and disbursement of federal funds. 71-1406. 71-1407. Gifts. Eligibility for vocational rehabilitation services. 71-1408. 71-1409. Eligibility for rehabilitation services. 71-1410. Maintenance not assignable. 71-1411. Hearings. 71-1412. Misuse of lists and records.

71-1413. Saving clause. 71-1414. Appropriation authorization. 71-1415. Short title.

71-1401. Definitions. As used in this act:

- "State department" means the state department of public welfare.
- "State board" means the state board of public welfare. (b)
- "Administrator" means the administrator of the state department of public welfare.
- "Supervisor" means the supervisor of the program of services for the blind.
- (e) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.
- (f) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks including, but not limited to, services of the type described in subsection (d) hereof.
- "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap including but not limited to, manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.
- "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.
- (i) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.
- "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.
- "Business licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in a business.

- (1) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.
- (m) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees; or who has other eye conditions which render vision equally defective; or who has an eye condition which will cause blindness.

History: En. Sec. 1, Ch. 167, L. 1955.

71-1402. Administrator. The program shall be administered, under the general supervision and direction of the state department, by a supervisor and such other staff as designated by the administrator in accordance with established personnel standards of the state department and on the basis of their education, training, experience and demonstrated ability.

History: En. Sec. 2, Ch. 167, L. 1955.

- 71-1403. Supervisor—duties. In carrying out his duties under this act, the supervisor:
- (a) shall, with the approval of the state department, make regulations governing the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation and other services, procedures for fair hearings and such other regulations as he finds necessary to carry out the purposes of this act;
- (b) shall, with the approval of the administrator establish appropriate subordinate administrative units;
- (c) shall, with the approval of the state administrator, take such other action as he deems necessary or appropriate to carry out the purposes of this act.

History: En. Sec. 3, Ch. 167, L. 1955.

- 71-1404. Administration. Except as otherwise provided by law, the state department, shall provide the services authorized by this act to blind individuals determined by the supervisor to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:
- (a) co-operate with other departments, agencies and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;
- (b) enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;

(c) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals.

History: En. Sec. 4, Ch. 167, L. 1955.

71-1405. Co-operation with federal government. The state department, may co-operate, pursuant to agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to the purposes of this act and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History: En. Sec. 5, Ch. 167, L. 1955.

71-1406. Receipt and disbursement of federal funds. The state treasurer is hereby designated as the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to the purposes of this act. The state treasurer shall make disbursements from such funds and from all state funds available for such purposes upon certification of the administrator in accord with the regulations so provided.

History: En. Sec. 6, Ch. 167, L. 1955.

71-1407. Gifts. The administrator is hereby authorized and empowered, with the approval of the state board, to accept and use gifts made unconditionally by will or otherwise for the purposes of this act. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of this act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 7, Ch. 167, L. 1955.

- 71-1408. Eligibility for vocational rehabilitation services. Vocational rehabilitation services shall be provided to any blind individual (1) who, at the time of filing his application therefor, resides in the state for other than a temporary purpose, and whose vocational rehabilitation the supervisor determines, after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government; provided that, except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state department thereunder, the following vocational rehabilitation services shall be provided at public cost only to blind individuals found to require financial assistance with respect thereto:
 - (a) Physical restoration.
- (b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.
 - (c) Occupational and business licenses.

- (d) Tools, equipment, initial stock and supplies, including livestock and capital advances.
 - (e) Training books and materials.
 - (f) Maintenance.

History: En. Sec. 8, Ch. 167, L. 1955.

Cross-Reference

Vocational rehabilitation, sec. 41-801 et seq.

71-1409. Eligibility for rehabilitation services. Rehabilitation services shall be provided to any blind individual (a) who, at the time of filing his application therefor resides in the state for other than a temporary purpose, (b) who the supervisor, after full investigation, determines can be assisted, through the provision of such services, to achieve a more useful and purposeful life, or (c) who is eligible therefor under the terms of an agreement with another state or with the federal government.

History: En. Sec. 9, Ch. 167, L. 1955.

71-1410. Maintenance not assignable. The right of any individual to maintenance under this act shall not be transferable or assignable at law or in equity.

History: En. Sec. 10, Ch. 167, L. 1955.

71-1411. Hearings. Any individual applying for or receiving vocational rehabilitation or any other services authorized by this act who is aggrieved by any action or inaction of the state department shall be entitled, in accordance with regulations, to a fair hearing by the state department.

History: En. Sec. 11, Ch. 167, L. 1955.

Cross-Reference

Quasi-judicial functions transferred to board of social and rehabilitation appeals, sec. 82A-1907(1).

71-1412. Misuse of lists and records. It shall be unlawful, except for purposes directly connected with the administration of the programs authorized by this act, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation or any other services authorized by this act, directly or indirectly derived from the records, papers, files or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

History: En. Sec. 12, Ch. 167, L. 1955.

71-1413. Saving clause. The legislative assembly reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts

done pursuant thereto shall exist subject to the power of the legislative assembly to amend or repeal this act at any time.

History: En. Sec. 15, Ch. 167, L. 1955.

71-1414. Appropriation authorization. There are hereby authorized to be included in the appropriations for the state department such sums as may be necessary to carry out the provisions of this act.

History: En. Sec. 16, Ch. 167, L. 1955.

71-1415. Short title. This act may be cited as the "Services to the Blind Act" of Montana.

History: En. Sec. 17, Ch. 167, L. 1955.

CHAPTER 15

MEDICAL ASSISTANCE

Section 71-1501 to 71-1510. Repealed. 71-1511. Provisions for administration.

71-1512. Services included in medical assistance.
71-1513. State department to consult with council appointed by governor composition of council.

71-1514. Freedom of doctors to treat recipients of medical assistance—freedom of selection of doctor.

71-1515. Contracting with other agencies to process claims.
71-1516. Eligibility requirements for medical assistance.
71-1517. Amount, scope and duration of assistance.

71-1518. Application for assistance.
71-1519. County share of participation.
71-1520. Investigation and determination of eligibility.
71-1521. Redetermination of eligibility.

71-1522. Change of residence of person receiving medical assistance.

Confidential records. Exclusion of lien. 71-1523. 71-1524.

71-1525. Relative's responsibility.

71-1526. Discrimination prohibited.

71-1501 to 71-1510. Repealed—Chapter 325, Laws of 1967.

Sections 71-1501 to 71-1510 (Secs. 1 to 10, Ch. 212, L. 1965), relating to medical

aid for the aged, were repealed by Sec. 20, Ch. 325, Laws 1967.

- 71-1511. Provisions for administration. (1) The state department of public welfare (hereinafter called "state department") is hereby authorized and empowered to administer and supervise a vendor payment program of medical assistance, under the powers, duties, and functions provided in sections 71-201 through 71-232, as amended and as contemplated by the provisions of Title XIX of the Federal Social Security Act.
- (2) The county department of public welfare shall be charged with the local administration and supervision of medical assistance, subject to the powers, duties and functions prescribed for the county department in sections 71-201 through 71-232.
- (3) It is hereby mandatory and required that the state plan and operation of medical assistance shall be in effect in each and every county

of the state and the administration and supervision of medical assistance shall be uniform throughout the several counties of the state.

- (4) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to medical assistance.
- (5) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.
- (6) The state department shall adopt appropriate rules and regulations, not inconsistent with this act, to administer and supervise the said program uniformly throughout the state and shall define by rules and regulations medical assistance. Medical assistance shall be furnished through payments to providers of services and supplies as contemplated in this act.

History: En. Sec. 1, Ch. 325, L. 1967.

Compiler's Note

Title XIX of the Social Security Act, referred to in this section, is compiled in the United States Code as Tit. 42, secs. 1396 to 1396d.

Performance of Duty

Board of public welfare performed its duty in setting flat rate compensation for care of patients by skilled nursing

homes, pending completion of state-wide cost survey, and thus mandamus did not lie to compel board to pay reasonable cost of care rather than flat rate. Lee v. Laitinen, 152 M 230, 448 P 2d 154.

Collateral References

Paupers 241; Social Security and Public Welfare 241.

70 C.J.S. Paupers § 74; 81 C.J.S. Social Security and Public Welfare § 73.

71-1512. Services included in medical assistance. The definition of medical assistance shall include:

- (a) Inpatient hospital services;
- (b) Outpatient hospital services;
- (c) Other laboratory and X-ray services;
- (d) Skilled nursing home services;
- (e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere.

It may also include, although not necessarily limited to the following:

- (a) Medical care, or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
 - (b) Home health care services;
 - (c) Private duty nursing services;
 - (d) Dental services;
 - (e) Physical therapy and other related services;
 - (f) Clinic services;
- (g) Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

- (h) Other diagnostic, screening, preventive, rehabilitative, chiropractic and osteopathic services;
- Any additional medical service or aid allowable under or provided by the Federal Social Security Act.

The foregoing services shall be provided to the fullest extent that moneys appropriated, collected, accumulated or matched from any source by the state department will allow. Priorities of the foregoing items and amounts of medical assistance, if funds are inadequate, shall be determined by the state department. The state department shall establish standards of assistance.

History: En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971.

Compiler's Note

The Social Security Act, referred to in paragraph (i), is compiled in the United States Code as Tit. 42, sec. 301 et seq.

71-1513. State department to consult with council appointed by governor-composition of council. The state department shall advise and consult at least semiannually with a council composed of not less than nine members, to be appointed by the governor and to serve three year overlapping terms. The first appointed council shall draw lots to determine which members will serve three years, which two years, and which one year. The following associations, to wit: (1) the Montana Medical Association, (2) the Montana State Dental Association, (3) the Montana Hospital Association, (4) the Montana State Pharmaceutical Association, (5) the Montana Nursing Home Association, (6) the Montana Association of County Commissioners, (7) the Montana Nurses Association, and (8) the Montana Optometry Association shall be requested to recommend not less than one member for appointment to such council in order that there be adequate representation of interested professional and official groups, As vacancies occur, the organization recommending the individual whose position is expiring will be requested to submit a recommendation for filling the position. The ninth member of such additional members as the governor may elect to appoint as representative of consumer interests. The following shall serve ex officio as members of the council: (a) executive director of the state board of health, (b) the administrator of the state department of public welfare, as chairman. Members shall be reimbursed for travel and actual expenses while in performance of their duties, not to exceed that allowed to nonelective state officials.

History: En. Sec. 3, Ch. 325, L. 1967.

Cross-Reference Council abolished, sec. 82A-1908(5).

71-1514. Freedom of doctors to treat recipients of medical assistance freedom of selection of doctor. The state department shall provide for professional freedom of those licensed practitioners who provide medical assistance under this act, and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care. services or prescribed drugs.

History: En. Sec. 4, Ch. 325, L. 1967.

71-1515. Contracting with other agencies to process claims. The state department may, by suitable rules and regulations, provide for contracting with any state or private agency for processing and payment of claims under such program of medical assistance, and the state welfare board shall have the authority to contract with one or more private or state agencies to provide any or all of the enumerated medical services.

History: En. Sec. 5, Ch. 325, L. 1967.

- 71-1516. Eligibility requirements for medical assistance. Medical assistance shall be granted in behalf of all persons who reside in the state of Montana, including residents temporarily absent from the state and who meet any of the following requirements:
- (1) Who receive all or part of their income from the federally aided public assistance programs: old-age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled;
- (2) All persons, who upon application, would be eligible for financial assistance under any one of the federally aided programs referred to above;
- (3) All persons who would be entitled to financial assistance under one of the federally aided categories except that they do not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;
- (4) Persons in medical institutions who, if they were no longer in such institution, would be eligible for financial assistance under one of the above programs;
- (5) All children under twenty-one who meet the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance;
- (6) All children under twenty-one who are in foster care under the supervision of the state.

History: En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971.

71-1517. Amount, scope and duration of assistance. The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the state department. Payments on behalf of persons in state operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available.

History: En. Sec. 7, Ch. 325, L. 1967; amd. Sec. 3, Ch. 261, L. 1971.

71-1518. Application for assistance. Application for assistance under this part shall be made to the county office of the county department in the county in which the person is residing. The application shall be presented in the manner on the form prescribed by the state department. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 8, Ch. 325, L. 1967.

71-1519. County share of participation. Each county department shall reimburse the state department in the amount of one-half $(\frac{1}{2})$ of the approved medical payments paid by the state department in behalf of persons in the county each month, exclusive of the federal share except such persons who are patients, inmates or residents of state operated institutions. Such reimbursements shall be credited to the medical assistance account of the state department.

History: En. Sec. 9, Ch. 325, L. 1967; amd. Sec. 5, Ch. 261, L. 1971.

71-1520. Investigation and determination of eligibility. The county department shall promptly investigate and determine the eligibility of each applicant under this act in accordance with the rules and regulations of the state department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this act, and aid shall be furnished promptly to eligible persons. The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department. Each applicant shall receive written notice of the decision concerning his application and right of appeal shall be secured to the applicant under the procedures of section 71-223.

History: En. Sec. 10, Ch. 325, L. 1967.

71-1521. Redetermination of eligibility. All medical assistance cases approved under this part shall be reviewed as often as shall be required under the rules and regulations of the state department.

History: En. Sec. 11, Ch. 325, L. 1967.

71-1522. Change of residence of person receiving medical assistance. A recipient who moves his residence to another county in this state shall continue to receive assistance under the rules and regulations of the state department. The county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 12, Ch. 325, L. 1967.

71-1523. Confidential records. All applications, information and records concerning any applicant or recipient of medical assistance under the provisions of this act shall be confidential and shall not be disclosed nor used for any purpose not directly connected with the administration of medical assistance. The violation of this provision is hereby made a misdemeanor and is punishable as such.

History: En. Sec. 13, Ch. 325, L. 1967.

71-1524. Exclusion of lien. No applicant hereunder shall be required to execute an agreement for lien on his real property. No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual). There shall be no adjustment or recovery (except, in the case of an individual who was sixty-five (65) years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age twenty-one (21) or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of such individual. Recoveries shall be prorated to the federal government and the county involved in the proportion to which each contributed to the medical assistance. The provisions of this act are hereby extended to provide for the recovery of all medical assistance paid under sections 71-1511 through 71-1524 and likewise to all medical aid to the aged assistance paid by the state department during the period of time July 1, 1965, through June 30, 1967.

History: En. Sec. 14, Ch. 325, L. 1967; amd. Sec. 1, Ch. 249, L. 1969.

71-1525. Relative's responsibility. The provisions of other parts of Title 71, as amended, notwithstanding, the only relatives that can be held responsible for payment of medical assistance under the program are the husband or wife of the individual, the parents of children under age eighteen (18), and the parents of blind or disabled persons over age eighteen (18).

History: En. Sec. 15, Ch. 325, L. 1967; amd. Sec. 15, Ch. 423, L. 1971.

71-1526. Discrimination prohibited. No discrimination shall be practiced or asserted against any applicant for or recipient of care and services under this act, on the basis of race, color, or national origin; and the furnishing of care and services under this act to any applicant or recipient thereof shall not be delayed or denied on the basis of race, color, or national origin.

History: En. Sec. 16, Ch. 325, L. 1967.

CHAPTER 16

ECONOMIC OPPORTUNITY AND POVERTY RELIEF

Section 71-1601. Purpose and intent of act.

71-1602. Agreements with federal agencies authorized.

71-1603. Expenditure of public funds to carry out agreements.

71-1604. City-county commission authorized—powers.

71-1601. Purpose and intent of act. It is the purpose of this act to enable the state of Montana, and the counties, cities, towns, school districts and other governmental subdivisions of the state, and other organizations or agencies authorized to receive federal assistance under Public

Law 82-452, 88th Congress, to secure for the citizens of Montana the benefits offered by the United States government to the several states and their citizens in the law of August 20, 1964 (Public Law 82-452 of the 88th Congress; 78 Stats. 508) for economic betterment and the relief of poverty. It is the intent of this act to grant to the state and its subdivisions the widest possible authority, within the limits set by law, to co-operate and combine their efforts with those of the appropriate federal agencies, and to comply with any federal regulations, not in conflict with the laws of the state of Montana, to carry out the purposes of the congressional act and secure the resulting benefits for Montana and its people.

History: En. Sec. 1, Ch. 263, L. 1965.

Compiler's Note

Public Law 88-452 of the 88th Congress is compiled in the United States Code as Tit. 42, secs. 2711 to 2981.

71-1602. Agreements with federal agencies authorized. The state of Montana, and all offices, agencies, departments and divisions thereof, and all counties, cities, towns, school districts and other governmental subdivisions of the state, and other organizations or agencies authorized to receive federal assistance under Public Law 88-452, 88th Congress, singly or in combination, are hereby authorized and empowered, within the limits set by the respective laws governing them, to enter into and carry out contracts, agreements and plans with any authorized agency of the United States government for the implementation and operation within the areas of their respective jurisdictions of the act of Congress of August 20, 1964 (Public Law 88-452 of the 88th Congress; 78 Stats. 508).

History: En. Sec. 2, Ch. 263, L. 1965.

71-1603. Expenditure of public funds to carry out agreements. The agencies of the state and local government enumerated in the preceding section may, within the limits of the laws governing their respective authorities to raise and expend public moneys, budget for, and/or expend public moneys in order to enter into and carry out contracts, agreements and plans under this act and Public Law 88-452. Any such expenditures must be made from the budgets, budget items or appropriations set up for the general purpose to be served by the project.

History: En. Sec. 3, Ch. 263, L. 1965.

- 71-1604. City-county commission authorized—powers. The city council or councils of a city or cities within a county and the county commissioners of the county may create a city-county commission to effect the purposes of this act. Such city-county commission is authorized to:
- (1) Make contracts and agreements with United States government agencies for the purpose of carrying out the intent of this act;
- (2) Accept and expend public and private funds made available to such commission for the purpose of carrying out the intent of this act.

History: En. Sec. 4, Ch. 263, L. 1965.

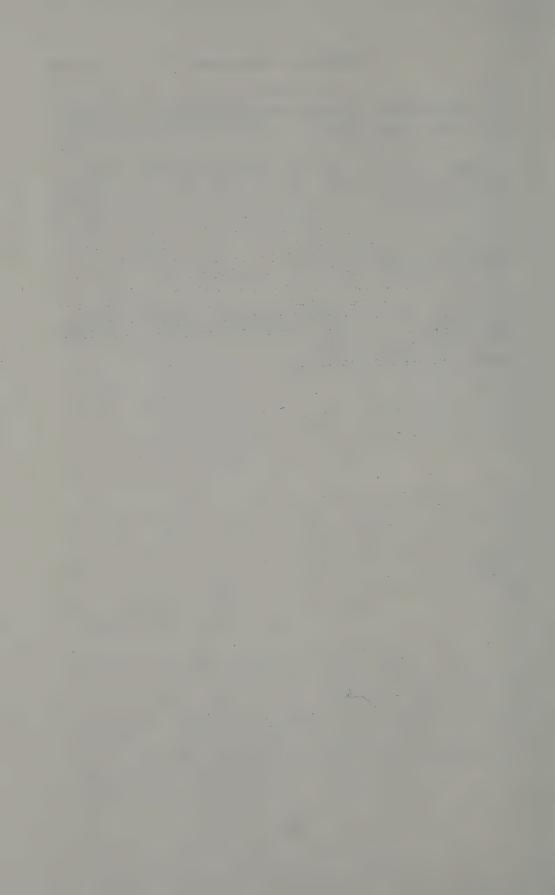
CHAPTER 17

PROMOTION AND DEVELOPMENT OF ACTIVITIES OF THE ELDERLY

Section 71-1701. Creation of funds for recreational and other activities of elderly by local governments.

71-1701. Creation of funds for recreational and other activities of elderly by local governments. The governing body of a city, county, town or municipality may in its discretion establish a fund to promote, establish and maintain recreational, educational and other activities of the elderly by a levy of up to one mill on each dollar of taxable property, which tax levy shall be in addition to all other tax levies. The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided, however, that expenditures shall be made for the promotion and development of recreational, educational and other activities of the elderly, including motivation of the use of the talents of the elderly. The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities.

History: En. Sec. 1, Ch. 380, L. 1971.



TITLE 72

RAILROADS

1. Railroads—regulation by board of railroad commissioners, 72-101 to 72-168.

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CHAPTER 1

RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

- Section 72-101. Creation of commission.
 - 72-102. Oath.
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72-101. (3779) Creation of commission. There is hereby created and established a board of railroad commissioners of the state of Montana, to be known as the "board of railroad commissioners of the state of Montana," said board to consist of three members who shall be qualified electors of the state. The first board of railroad commissioners shall be composed of the following persons, namely: B. T. Stanton of Gallatin county, Nathan Godfrey of Lewis and Clark county, and E. A. Morley of Silver Bow county. The persons named herein as commissioners shall serve until the first Monday of January, 1909, or until their successors are elected and qualified. At the general election to be held in November, 1908, there shall be elected three commissioners for said board, one for a term of two years, one for a term of four years, and one for a term of six years, and until their successors are elected and qualified. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said board so elected shall serve until his successor is elected and qualified. Biennially thereafter, at the general election, one member shall be elected for a period of six years, and until his successor is elected and qualified, to succeed the member of such board whose term shall expire on the first day of January following. Any vacancy occurring in the board shall be filled by appointment by the governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the board, there shall be elected one member to fill out the unexpired term for which such vacancy exists. No person in the employ of, or holding any official relations to any railroad, or owning any stocks, bonds, or other securities of any railroad, or who is or shall become in any manner pecuniarily interested in any railroad, or in any stocks, bonds, or other securities thereof, shall be a member of said board. Any member of said board who, after his election or appointment to office, or after his induction into office, shall become an employee of or holder of any official relation to any railroad, or who shall become an owner or holder of any stocks, bonds, or other securities of any railroad, or have or acquire any pecuniary interest in any stocks, bonds, or other securities of any railroad, shall forfeit his office, and the governor shall appoint a successor thereto as herein provided in case of a vacancy in said board. No commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest.

History: En. Sec. 1, Ch. 37, L. 1907; Sec. 4363, Rev. C. 1907; re-en. Sec. 3779, R. C. M. 1921.

Cross-References

Board abolished and functions transferred to public service commission, sec. 82A-1703.

Continuation of board as public service commission, sec. 82A-1702(2).

Ex officio public service commission, sec. 70-102.

Legislative power to regulate rates, Const., Art. XV, sec. 5.

Motor carriers, regulation, sec. 8-101 et

seq.
Pipelines, regulation, sec. 8-202 et seq.
Public utilities, duties, sec. 70-101 et seq.

Constitutionality

The constitutionality of the creation of the railroad commission and the authority of the state, in the exercise of its police power for the preservation of the lives and property of its citizens, to place transportation by motor vehicles, trucks and buses, whether by common carrier or by individuals, under the supervision and control of such a commission are not here questioned. Similar action has been taken in practically every state of the Union and has been universally upheld. State v. Johnson, 75 M 240, 248, 243 P 1073.

Election of Railroad Commissioner

Office of railroad commissioner is an elective one; temporary appointment is authorized only to fill vacancy until next general election; vacancy cannot be filled by special election. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 646.

Collateral References

Public Service Commissions ≈ 3.
73 C.J.S. Public Utilities §§ 31-35.
44 Am. Jur. 248, Railroads, §§ 34-39.

DECISIONS UNDER FORMER LAW

Election Procedure

Repealed section 23-809, requiring secretary of state to certify nominees' names to county clerks not less than 45 days before election, was inapplicable to election to fill a vacancy created by resigna-

tion of a regularly elected railroad commissioner where such commissioner deferred his effective date of his resignation until 32 days before election. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

72-102. (3780) Oath. Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in section 1, article XIX, of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

History: En. Sec. 2, Ch. 37, L. 1907; Sec. 4364, Rev. C. 1907; re-en. Sec. 3780, R. C. M. 1921; amd. Sec. 31, Ch. 177, L. 1965.

Cross-Reference

Bonds of state officers and employees, sec. 6-105 et seq.

72-103. (3781) Meetings of board—quorum—powers. The office of the board shall be in the city of Helena, and said office shall always be open during business hours, legal holidays and nonjudicial days excepted. The board shall hold sessions at least once each month in the city of Helena, and at such other times and such other places within this state as may be

expedient. The sessions of the board shall be public. A majority of the board shall constitute a quorum for the transaction of all business. The members of the board of railroad commissioners shall have the authority to administer oaths and affirmations. The board shall have power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R. C. M. 1921.

Collateral References

Public Service Commissions 9.
73 C.J.S. Public Utilities \$39 et seq.
44 Am. Jur. 251, Railroads, \$37.

72-104. (3782) Seal. The board shall have a seal, and such seal shall have the following words engraved thereon: "Board of Railroad Commissioners of the state of Montana," and said seal shall be affixed only to: First, writs; second, authentications of a record or other proceedings, or to a copy of a document on file in the office of the said board. The courts of this state shall take judicial notice of such seal.

History: En. Sec. 4, Ch. 37, L. 1907; Sec. 4366, Rev. C. 1907; re-en. Sec. 3782, R. C. M. 1921.

72-105. (3783) Officers of board. The board shall, immediately after its members have qualified, organize by electing one of its members as chairman, and shall appoint a secretary, who shall possess the same qualifications as members of said board, to serve during the pleasure of the board. Said board shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said board to the proper performance of its duties.

History: En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R. C. M. 1921; rep. in part by Ch. 176, L. office, and quo warranto does not lie to determine right of members to act as chairman. State ex rel. Boyle v. Hall, 53 M 595, 601, 165 P 757.

Public Office

The chairmanship of the state board of railroad commissioners is not a public

Collateral References

Public Service Commissions©3. 73 C.J.S. Public Utilities § 35.

72-106. (3784) Repealed.—Chapter 129, Laws of 1963; Chapter 212, Laws of 1963.

Repeal

Section 72-106 (Sec. 6, Ch. 37, L. 1907), relating to salaries of the commissioners,

the secretary, and the stenographer, was repealed by Sec. 1, Ch. 129, Laws 1963, and by Sec. 3, Ch. 212, Laws 1963.

72-107. (3785) Expenses of board and employees. Said commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid, the amounts to be passed on by the state board of examiners and paid as other expense of the board. The state shall furnish said board with suitable offices in the state capitol building at Helena, Montana, and provide it with all necessary

furniture, stationery, and printing, upon requisitions signed by the chairman of said board.

History: En. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R. C. M. 1921.

Cross-Reference

Free transportation, sec. 72-617.

Free Transportation

Members and employees of the railroad commission should be allowed to ride free only when traveling on official business. John v. Northern Pacific Ry. Co., 42 M 18, 61, 111 P 632, 32 LRA, NS 85.

72-108 to 72-110. (3786 to 3788) Repealed.—Chapter 129, Laws of 1963.

Repeal

Sections 72-108 to 72-110 (Secs. 1 to 3, Ch. 109, L. 1919; Sec. 1, Ch. 90, L. 1927),

relating to salaries of employees of the board, were repealed by Sec. 1, Ch. 129, Laws 1963.

72-111. (3789) Allowance for postage, expressage and other incidental expenses. Said board shall also be allowed the sum of one thousand dollars per annum for postage, expressage, and other incidental expenses. The accounts for payments authorized by this section shall be paid only when audited by the state board of examiners, and the board shall file, with its vouchers for such payments, a statement, verified by a member of the board, showing the names of all persons employed and the purpose for which they were employed, and the work performed by them.

History: En. Sec. 8, Ch. 37, L. 1907; Sec. 4370, Rev. C. 1907; re-en. Sec. 3789, R. C. M. 1921.

72-112. (3790) Duties of secretary. The secretary shall keep a full and complete record of all proceedings of the board, and be the custodian of its records, and file and preserve at the office of the board all books, maps, documents, and papers entrusted to his care, and be responsible to the board for the same. He shall perform such other duties as the board may prescribe.

History: En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907; re-en. Sec. 3790, R. C. M. 1921.

72-113. (3791) Process to compel attendance and examination of witnesses. The process issued by said board shall be under seal and extend to all parts of the state. Said board shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record, or by any person appointed by the board for such purpose. In the event the process issued by the board is a subpoena for the attendance of a witness, and he shall have failed, neglected, or refused to obey the same, the board is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having such witness appear in such trial, and the court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person or persons as a witness before the court; and the board shall thereupon have the power and authority to examine such witness before said court, under oath, respecting any inquiry or investigation being made by said board, under and pursuant to the pro-

visions of this act. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in said court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by said board.

History: En. Sec. 10, Ch. 37, L. 1907; Sec. 4372, Rev. C. 1907; re-en. Sec. 3791, R. C. M. 1921. Collateral References

Public Service Commissions ← 15, 16.
73 C.J.S. Public Utilities §§ 53, 54.

(3792) Definitions and terms. The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing, and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property made from any point within this state to any other point within this state, whether the transportation of the same shall be wholly within this state, or partly within this state and partly within an adjoining state or states. The term "transportation" shall include all instrumentalities of shipment or carriage. The term "railroad" shall be taken to mean any corporation, company, or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleepingcar companies. The term "board" in this act shall be taken to mean the board of railroad commissioners of the state of Montana. The provisions of this act shall apply to all persons, firms, or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R. C. M. 1921, Collateral References Carriers 2. 13 C.J.S. Carriers § 148.

72-115. (3793) "Railroad" defined. The word "railroad," whenever used in this act shall be held to mean and include railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and all common carriers.

roads § 1.

History: En. Sec. 12, Ch. 37, L. 1907; Sec. 4374, Rev. C. 1907; re-en. Sec. 3793, R. C. M. 1921.

Collateral References Carriers 4; Railroads 2. 13 C.J.S. Carriers § 6; 74 C.J.S. Rail-

44 Am. Jur. 215, Railroads, § 3.

72-116. (3794) Power of board to fix rates, schedules and classifications. The power and authority is hereby vested in the said board, and it is hereby made its duty to adopt, as soon as practicable after the organization of the board, all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this act. The said board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide

all freight and merchandise of whatsoever character that may be transported over railroads of this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. Said board shall also have the power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads.

The rates, tolls, or charges on any property, which shall for any reason remain unclassified by the board, shall not in any event exceed the highest rates fixed for any classification by said board. And it shall be within the province of the board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana, or any point therein, in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa; and in proper cases, where it appears that the United States interstate commerce commission law has been violated, it is hereby made the duty of said board to make complaint to the interstate commerce commission of the United States, and to aid such commission in any investigation it may make concerning violations of the United States law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and state law, and to protect the interests of the people.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R. C. M. 1921.

Cross-Reference

Legislative power to regulate rates, Const., Art. XV, sec. 5.

Complaint

Since the presumption obtains that the railroad commission fixed and established reasonable rates in obedience to this section, and that the rate as established is in accordance with the approved and published tariff, a complaint which fails to allege that freight charges were not in accordance with such tariff is defective. Doney v. Northern Pacific Ry. Co., 60 M 209, 227, 199 P 432, explained in 91 M 194, 203, 205, 7 P 2d 919; 91 M 214, 216, 220, 7 P 2d 927; and 287 U S 359, 77 L Ed 364, 53 S Ct 146.

Established Tariff Has Effect of Statute

A tariff duly filed and published by the railroad commission has the force and effect of a statute and is binding alike upon the shipper and carrier, until modified by the tribunal authorized to change it. Doney v. Northern Pacific Ry. Co., 60 M 209, 227, 199 P 432, explained in

91 M 194, 203, 7 P 2d 919; 91 M 216, 220, 7 P 2d 927; and 287 U S 359, 77 L Ed 364, 53 S Ct 146.

Exclusive Remedy

The remedies prescribed by the Railroad Commission Act for the recovery of damages caused by the exaction of discriminatory or unreasonable freight charges are exclusive and a complaint based upon the common-law remedy and drawn in entire disregard of the provisions of the statute did not state a cause of action, the common-law remedies having been superseded by said chapter. Doney v. Northern Pacific Ry. Co., 60 M 209, 227, 199 P 432, explained in 91 M 194, 203, 7 P 2d 919; 91 M 216, 220, 7 P 2d 927; and 287 U S 359, 77 L Ed 364, 53 S Ct 146.

Rates Cannot Be Changed Retroactively

Neither commission nor courts has power to invalidate retroactively established rates and thus permit recovery of overcharge or undercharge by shipper or carrier; although ruling in Doney case, cited below, allowing reparations where commission subsequently changes rates was in error, it was binding until overruled. Montana Horse Products Co. v. Great

Northern Ry. Co., 91 M 194, 7 P 2d 919; Sunburst Oil & Refining Co. v. Great Northern Ry. Co., 91 M 216, 7 P 2d 927; overruling contrary holding in Doney v. Northern Pacific Ry. Co., 60 M 209, 199 P 432. No federal right was infringed upon by trial court's adherence to Doney or supreme court's application of rule to past cases. Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U S 358, 77 L Ed 360, 53 S Ct 145, affirming Sunburst decision above.

Voluntary Rate Reduction

Voluntary reduction of a rate by a carrier, with consent of board of railroad commissioners, does not make the prior rate unlawful, unreasonable or discriminatory or the basis of an action for damages. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 199, 7 P 2d 919.

Collateral References

Carriers 12(1); Public Service Commissions 7.1 to 7.11.

13 C.J.S. Carriers §§ 397, 582; 73 C.J.S. Public Utilities § 41.

13 Am. Jur. 2d 646 et seq., Carriers,

§ 105 et seq.

Consideration of body of rates in determining the reasonableness of carrier's rates on a particular commodity. 15 ALR 185. Carrier's right or liability in respect of

excess of lawful charge over charge understated where discrimination is forbidden. 83 ALR 245 and 88 ALR 2d 1375.

Right to maintain action against carrier on the ground of excessiveness of rates filed and published by carrier pursuant to law. 97 ALR 420.

Shipper's right against carrier in respect of service charges not included as required by statute, in the tariff filed. 103 ALR

72-117. (3795) Making schedules effective. When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation, or common carrier who may desire it, an opportunity to make an explanation or showing, or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classifications.

All classifications and rates fixed and established by the board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said board. Each railroad affected by the provisions of this act shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type, showing all classifications and rates fixed and established by the said board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than one hundred dollars nor more than five hundred dollars for each day that such failure or neglect is continued.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R. C. M. 1921.

Cross-Reference

Employees receiving illegal fares, sec. 94-1613.

Publication and Notice

The board of railroad commissioners is not required, when acting upon a petition or application for reduced rail rates, to cause publication and to give notice pursuant to this section and section 72-

118, in advance of any action on such petition or prior to issuance of any authorization thereon. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, 144 M 110, 394 P 2d 758, 760.

- 72-118. Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint. The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided. The said board shall make and establish reasonable rates for the transportation of freight within the state of Montana, and shall prescribe rates, tolls and charges for all other service performed by any railroad subject hereto. No change or revision of any rate, charge, classification or rule of service contained in any tariff, classification or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the board. Such changes or revisions shall be made by either of the methods hereinafter set forth:
- (1) by filing an application with the board describing the nature and extent of the change, alteration or cancellation of the rate, classification, rule or regulation sought and the board shall thereafter give not less than ten (10) days' notice, in the manner determined by the board as most likely to give notice to the persons to be affected, of the time and place of public hearing to be held on the application by the board at which time and place the public generally, or any person, firm, or corporation shall have an opportunity to present such facts, information or statistics as shall be pertinent to the hearing then being held; or
- (2) by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided, however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof.

Upon its own initiative, or upon the complaint of any interested party filed with the board within fifteen (15) days after the date upon which a change or revision of any rate, fare, change or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred and twenty (120) days, provided, however, that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the rail carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the board of any complaint filed by any interested party to any proposed tariff change or revision and such carrier or car-

riers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a rail carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interests or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided, however, that unless such hearing is held and such order is issued within one hundred and twenty (120) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

The board may, on its own motion or on the complaint by a shipper or other person interested investigate any rate, classification or rule approved and in effect for transportation of freight by any railroad within the state of Montana. The said board must, within forty (40) days after the commencement of an investigation on the board's initiative, or after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R. C. M. 1921; amd. Sec. 1, Ch. 227, L. 1971.

Change in Rates

Advantage, preference or discrimination standing alone is not sufficient justification for interference with intrastate rates. It is only undue or unreasonable advantage, preference or prejudice, or undue, unreasonable or unjust discrimination that justifies intervention by the interstate commerce commission. Montana Citizens' Freight Rate Assn. v. Board of Railroad Commrs., 128 M 127, 271 P 2d 1024, 1030.

Disparity between Interstate Rates and Intrastate Rates

The state board has no authority to grant an automatic raise in intrastate rates simply because the interstate commerce commission had granted a raise in interstate rates. The mere disparity between the interstate rates and the intrastate rates does not compel the state board to grant an increase so as to remove the disparity. Montana Citizens' Freight Rate Assn. v. Board of Railroad Commrs., 128 M 127, 271 P 2d 1024, 1027.

Hearing Complaint

A shipper, deeming himself aggrieved by a rate fixed by the railroad commission because unjust, unreasonable or discriminatory, must proceed under section 72-133, if he desires to have it declared so; where no rate has been fixed or the one established is considered excessive, he must apply to the commission for investigation and determination of his contention, under this section, before he can maintain an action in the courts; and if his case is predicated upon freight charges made in excess of those fixed and established by the commission, his complaint must so allege and the action must be brought within twelve months from the date of payment, under section 72-130. Doney v. Northern Pacific Ry. Co., 60 M 209, 227, 199 P 432, explained in 91 M 194, 203, 7 P 2d 919; 91 M 216, 220, 7 P 2d 927; and 287 U S 359, 77 L Ed 364, 53 S Ct 146.

Publication and Notice

The requirement of this section for publication and notice obtains only in the event the board of railroad commissioners makes or establishes any increase or raise in rate of charge for the transportation of freight. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, 144 M 110, 394 P 2d 758, 760.

The board of railroad commissioners is not required, when acting upon a petition or application for reduced rail rates, to cause publication and to give notice pursuant to this section and section 72-117, in advance of any action on such petition or prior to issuance of any authorization thereon. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, 144 M 110, 394 P 2d 758, 760.

Rates Cannot Be Changed Retroactively

Neither commission nor courts has power to invalidate retroactively established rates and thus permit recovery of overcharge or undercharge by shipper or carrier; although ruling in Doney case, cited below, allowing reparations where commission subsequently changes rates was in

error, it was binding until overruled. Montana Horse Product Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919; Sunburst Oil & Refining Co. v. Great Northern Ry. Co., 91 M 216, 7 P 2d 927; overruling contrary holding in Doney v. Northern Pacific Ry. Co., 60 M 209, 199 P 432. No federal right was infringed upon by trial court's adherence to Doney or supreme court's application of rule to past cases. Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U S 358, 77 L Ed 360, 53 S Ct 145, affirming Sunburst decision above.

72-119. (3797) General powers of board. The board shall have the general supervision of all railroads, express companies, car companies, sleeping-car companies, freight and freight-line companies, and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said board and within its power and authority under the provisions of this act; and shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein, or by the officers, agents, or employees thereof. The board shall also have the power and authority, and it shall be its duty, to examine and inspect, or cause to be examined and inspected, under its authority, all books, records, files, and papers of the persons and companies specified above, in so far as the same may be pertinent to any matter under investigation before said board, and to hear and take testimony in the progress of any inquiry or investigation authorized by this act.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907; re-en. Sec. 3797, R. C. M. 1921.

Collateral References

Carriers 1, 5, 24; Public Service Commissions 6.1 to 6.11.

13 C.J.S. Carriers §§ 15, 16, 19; 73 C.J.S. Public Utilities § 38 et seq.

44 Am. Jur. 250, Railroads, § 36.

72-120. (3798) Investigation into accidents. The said board, or some members thereof to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon, or in the destruction of property greater in value than two thousand dollars. The testimony taken on any such hearing shall be transcribed and filed in the office of the board.

History: En. Sec. 16a, Ch. 37, L. 1907; Sec. 4379, Rev. C. 1907; re-en. Sec. 3798, R. C. M. 1921. Collateral References
Railroads \$\infty 9(1).
74 C.J.S. Railroads \\$ 29.

72-121. (3799) Duty of railroad company to report accidents. It is hereby made the duty of every railroad company operating any line of railroad within this state, promptly upon the occurrence or in connection with the operation of its line within the state, of any accident such as is mentioned in the next preceding section, to report the same to the board of

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railroad commissioners, in which report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed.

History: En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907; re-en. Sec. 3799, R. C. M. 1921.

Collateral References
Railroads ≈ 250.
74 C.J.S. Railroads § 436 et seq.

72-122. (3800) Witnesses—compensation—immunity. The said board, in making any examination or investigation provided for in this act, shall have the power to issue subpoenas for the attendance of witnesses, by such rules as it may prescribe. Each witness shall receive the sum of three dollars per day, together with the sum of five cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said commission. And no witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. No person shall be excused from attending or testifying, or producing any books, papers, documents, or any thing or things, before any court or magistrate, or commissioner or board, upon any investigation, proceeding or trial under the provisions of this act, or for any violation of any of them, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime, or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify, or produce evidence; and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

History: En. Sec. 18, Ch. 37, L. 1907; Sec. 4381, Rev. C. 1907; re-en. Sec. 3800, R. C. M. 1921.

Collateral References
Railroads \$\infty 9(1).
74 C.J.S. Railroads \\$ 29.

72-123. (3801) Power to compel railroad companies to provide adequate accommodations and service. The board shall have the power, and it shall be its duty, to compel any and all railroads subject hereto, to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting rooms for passengers, and suitable rooms for freight and baggage at all stations.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907; re-en. Sec. 3801, R. C. M. 1921.

Discontinuance of Service

An order of the board that there should be no curtailment or discontinuance of passenger train service between points within the state except where authorized by commission is valid under the statute and in line with authorities that a public utility may not discontinue its service without approval of the public service commission. Great Northern Ry. Co. v.

Board of Railroad Commrs., 130 M 250, 298 P 2d 1093, 1094, appeal dismissed in 352 U S 904, 1 L Ed 2d 114, 77 S Ct 146.

Railroad was not authorized to discontinue service without permission of commission, although in an earlier petition by the railroad to discontinue service the commission had ruled it had no jurisdiction. That order was subject to review and the obligation to have it reviewed rested on the railway company as a necessary step to procure consent of board for abandonment of service. Great Northern Ry. Co. v. Board of Railroad Commrs.,

130 M 250, 298 P 2d 1093, 1095, appeal dismissed in 352 U S 904, 1 L Ed 2d 114, 77 S Ct 146.

(3802) Attorney general as attorney for board. The attorney general is hereby constituted the attorney and counselor of said board, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by said board under this law, in his own county; provided, that said board shall have power and authority to employ special counsel, with the consent and approval of the attorney general, to assist in any case, matter, proceedings, or investigation instituted under this law. It is hereby made the duty of the attorney general, upon direction of said board, and of the county attorney of each county in this state, upon direction of the attorney general, to institute and prosecute, and to appear and defend, any action or proceeding arising under the provisions of this law. All suits and proceedings filed in any court of this state, under the provisions of this law, shall have precedence over all other business in such court, save and except criminal business and original proceedings in the supreme court. The fees and expenses of additional counsel shall be fixed and determined by the state board of examiners, and allowed and paid as items of expense the same as other items of expense of said board of railroad commissioners.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R. C. M. 1921.

Collateral References

Attorney General 6; District and Prosecuting Attorneys 7(1).

7 C.J.S. Attorney General §§ 5, 6; 27 C.J.S. District and Prosecuting Attorneys § 12(1).

7 Am. Jur. 2d 10, Attorney General, § 9; 42 Am. Jur. 253, Prosecuting Attorneys, § 19.

72-125. (3803) Court review of action of board—pleadings. Actions to review the determination of the board fixing any classification, rate, toll, charge, regulation, or order, or the refusal of said board to make, fix, or establish any classification, rate, toll, charge, regulation, or order, shall be commenced in the district court of the county having jurisdiction thereof by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions, and notice may be served upon the party defendant, either by summons issued and served as provided for in this code in civil actions, or the court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than five days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions. If, upon the hearing, the court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said board to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the court, or by the judge thereof at chambers.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907; re-en. Sec. 3803, R. C. M. 1921.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, M. R. Civ. P., Table A.

Obligation to Review

Fact that board ruled it had no jurisdiction to act on railroad's petition to discontinue service did not authorize railroad to discontinue service without commission's consent. The order was subject to review and the obligation to have it

reviewed rested on the railway company as a necessary step to procure consent for abandonment of service. Great Northern Ry. Co. v. Board of Railroad Commrs. 130 M 250, 298 P 2d 1093, 1095, appeal dismissed in 352 U S 904, 1 L Ed 2d 114, 77 S Ct 146.

Collateral References

Carriers 218(2); Public Service Commissions 27.

13 C.J.S. Carriers §§ 24, 284, 307, 309, 310, 584; 73 C.J.S. Public Utilities § 64. 13 Am. Jur. 667 et seq., Carriers, § 129

72-126. (3804) Prohibition against rebates and discrimination. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand, or receive from any person, firm, or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said board of railroad commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than five hundred dollars nor more than two thousand dollars for each offense; provided, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point

History: En. Sec. 22, Ch. 37, L. 1907; Sec. 4385, Rev. C. 1907; re-en. Sec. 3804, R. C. M. 1921.

within or without the state.

Collateral References

Carriers \$\sim 20(4), 21(2).
13 C.J.S. Carriers §\\$ 517, 518, 587.
13 Am. Jur. 2d 652, 653, Carriers, §\\$ 112, 113.

72-127. (3805) Discrimination in rates and charges. If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand, or receive from any person, company, firm, or corporation, a greater rate, charge, or compensation than that fixed and established by the said board of railroad commissioners for the transportation of freight, passenger, or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight car, or for any other service performed, or to be performed by it, such railroad and its agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana a sum not less than five hundred dollars nor more than two thousand dollars.

History: En. Sec. 23, Ch. 37, L. 1907; Sec. 4386, Rev. C. 1907; re-en. Sec. 3805, R. C. M. 1921.

Cross-References

Discrimination in charges or facilities prohibited, Const., Art. XV, sec. 7.

Long haul not to cost less than short haul, Const., Art. XV, sec. 7.

Collateral References

Carriers \$348 et seq.
13 C.J.S. Carriers \$348 et seq.
13 Am. Jur. 2d 702 et seq., Carriers,
§175 et seq.

Discrimination by carrier between shippers as to use of right of way. 44 ALR 1526.

Carrier's right or liability in respect of excess of lawful charge over charge understated where discrimination is forbidden. 83 ALR 245 and 88 ALR 2d 1375.

Waiver of rights by carrier under interstate shipments as constituting unlawful discrimination among shippers. 135 ALR

72-128. (3806) Jurisdiction to enforce orders of board. The district court shall have jurisdiction to enforce, by proper decree, injunction or order, the rates, classifications, rulings, orders, and regulations made or established by the commission. The preceding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, rate, classification, or regulation made by the commission and applicable to such railroad. Such proceedings shall have precedence over all other business in such courts, except criminal business.

In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, order, rate, or classification is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employee of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, order, rate, or classification shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907; re-en. Sec. 3806, R. C. M. 1921.

Compiler's Note

The word "the" which followed "have," in the last sentence of the first paragraph, was omitted by the compiler.

Operation and Effect

Section 8-114 must be construed with

this section, and, the former being a later enactment, modifies this section so that the board of railroad commissioners could maintain action to enjoin motor carrier from operating over state highways until motor carrier complied with Motor Carriers Act. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455. (Affirmed by U. S. Supreme Court Dec. 8, 1947, 332 U S 495, 92 L Ed 99, 68 S Ct 167.)

Collateral References

Carriers 18; Public Service Commissions 21; Railroads 9(2).

13 C.J.S. Carriers §§ 24, 284, 304, 306, 309, 310, 390, 391, 584; 73 C.J.S. Public Utilities § 67; 74 C.J.S. Railroads § 29.

13 Am. Jur. 2d 611 et seq., Carriers, § 60 et seq.; 44 Am. Jur. 251, Railroads, § 38.

72-129. (3807) Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907; re-en. Sec. 3807, R. C. M, 1921.

72-130. (3808) Actions to recover excess charges. Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the board for such service, may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made, provided such action shall be brought within three years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and the said railroad, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be, or held to be, a waiver on the part of such person or shippers of the right to sue and recover for such excess or overcharge, as provided for in this section. If, upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907; re-en. Sec. 3808, R. C. M. 1921; amd. Sec. 1, Ch. 155, L. 1925.

Reparations

Neither commission nor courts has power to invalidate retroactively established rates and thus permit recovery of overcharge or undercharge by shipper or carrier; although ruling in Doney case, cited below, allowing reparations where commission subsequently changes rates was in error, it was binding until overruled. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919; Sunburst Oil & Refining Co. v. Great Northern Ry. Co., 91 M 216, 7 P 2d 927;

overruling contrary holding in Doney v. Northern Pacific Ry. Co., 60 M 209, 199 P 432. No federal right was infringed upon by trial court's adherence to Doney or supreme court's application of rule to past cases. Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U S 358, 77 L Ed 360, 53 S Ct 145, affirming Sunburst decision above.

Collateral References

Carriers \$\infty 202, 260.
13 C.J.S. Carriers \\$\\$ 323, 387, 586.
13 Am. Jur. 2d 664, Carriers, \\$ 125.

Joinder or representation of several claimants in action to recover overcharge. 1 ALR 2d 160.

72-131. (3808.1) Time for commencement of action. All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after.

History: En. Sec. 2, Ch. 155, L. 1925.

72-132. (3809) Action to determine reasonableness of rates or classification. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order made, fixed, or established by the board under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the classification, rate, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907; re-en. Sec. 3809, R. C. M. 1921.

Appellant Review

The findings of the board are by law deemed prima facie just, reasonable and proper, and courts should ascribe to them the strength due the judgments of a tribunal appointed by law and informed by experience. The board's conclusion is subject to review, but when supported by evidence is accepted as final. Chicago, M., St. P. & P. R. Co. v. Board of Railroad Commrs., 126 M 568, 255 P 2d 346, 350, explained in 130 M 250, 253, 298 P 2d 1093.

Federal Court Jurisdiction

Three-judge district court held to have jurisdiction of suit by railroad to enjoin Montana railroad commissioners from enforcing orders for continuation of operation of certain of railroad's trains, since under this statute such review constituted exercise of a judicial function (Jud. Code Sec. 266, as amended, 28 U. S. C. A. Sec. 380). Great Northern Ry. Co. v. Nagle, 16 F Supp 532, 533.

Injunction

The district court has no power over any rate order of the railroad commission except by final judgment; this necessarily deprives railroad, as well as shipper, of the right to invoke, and prohibits the court from issuing, a preliminary injunction in its behalf. It has, however, jurisdiction to use the provisional remedy of injunction in limine to suspend an order made by the commission, requiring a railroad company to operate a local passenger train each way daily between designated stations, pending final determination of action for review. State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 233, 163 P 115, explained in 299 U S 170, 81 L Ed 101, 57 S Ct 169.

Requiring Continuation of Service at a Loss

Fact that two trains were operated at a loss was not, standing alone, sufficient to justify discontinuance of the trains in question; requirement that a particular service be rendered at a loss does not make a service confiscatory and thereby an unconstitutional taking of property. Chicago, M., St. P. & P. R. Co. v. Board of Railroad Commrs., 126 M 568, 255 P 2d 346, 351, explained in 130 M 250, 253, 298 P 2d 1093.

Collateral References

Carriers 18. 13 C.J.S. Carriers §§ 284, 584.

72-133. (3810) Action by shippers. Any shipper, or other person interested, may bring an action in the district court of the county where the

principal office or place of business of such railroad is situated, or in any county where any classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board of railroad commissioners as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order, made, fixed, or established by the board under the provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive, except as herein otherwise provided; and provided further, that in any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. Costs shall be awarded in all actions brought under the provisions of this section as in other civil causes.

History: En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907; re-en. Sec. 3810, R. C. M. 1921.

Procedure

A shipper deeming himself aggrieved by a rate fixed by the railroad commission because unjust, unreasonable or discriminatory must proceed under this section, if he desires to have it declared so; where no rate has been fixed or the one established is considered excessive, he must apply to the commission for investigation and determination of his contention, under section 72-118, before he can maintain an action in the courts; and if his case is predicated upon freight charges made in excess of those fixed and established by the commission, his complaint must so allege and the action must be brought within twelve months (since amended) from the date of payment, under section 72-130. Doney v. Northern Pacific Ry. Co., 60 M 209, 234, 199 P 432, explained in 91 M 194, 203, 7 P 2d 919; 91 M 216, 220, 7 P 2d 927; and 287 U S 359, 77 L Ed 364, 53 S Ct 146.

Certiorari did not lie to annul an order

Certiorari did not lie to annul an order of the board of railroad commissioners directing removal of station facilities from one town to another since relator had a sufficient remedy under this section by bringing an action in the district court to determine whether the order was just and reasonable. State v. Board of Railroad Commrs., 73 M 1, 5, 6, 234 P 834.

Rates Cannot Be Changed Retroactively

Neither commission nor courts has power to invalidate retroactively established rates and thus permit recovery of overcharge or undercharge by shipper or carrier; although ruling in Doney case, cited below, allowing reparations where commission subsequently changes rates was in error, it was binding until overruled. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919; Sunburst Oil & Refining Co. v. Great Northern Ry. Co., 91 M 216, 7 P 2d 927; overruling contrary holding in Doney v. Northern Pacific Ry. Co., 60 M 209, 199 P 432. No federal right was infringed upon by trial court's adherence to Doney or supreme court's application of rule to past cases. Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U S 358, 77 L Ed 360, 53 S Ct 145, affirming Sunburst decision above.

72-134. (3811) Penalty for violation of law by railroad. If any railroad shall willfully violate any provision of this act, or shall do any other act herein prohibited, or shall refuse to perform any and all lawful orders emanating from said railroad commission relating to rates and charges, or any other duty enjoined upon it, for which a penalty has not herein been provided, for every such act of violation it shall pay to the state of Montana a penalty of not more than five hundred dollars.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R. C. M. 1921.

Collateral References
Carriers 20(1), 21(1).
13 C.J.S. Carriers §§ 451, 514, 569, 587.

72-135. (3812) Recovery of penalties and forfeitures. All penalties and forfeitures incurred, levied, and made under the provisions of this act.

shall be collected by said board of railroad commissioners and paid over to the state treasurer and credited to the general fund; provided, however, that should the said board fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein, for the space of sixty days after notice of the cause of complaint by such person or shipper aggrieved, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the said board.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907; re-en. Sec. 3812, R. C. M. 1921,

72-136. (3813) Acceptance of favors and gratuities from railroads prohibited. No railroad commissioner nor the said secretary shall, directly or indirectly, solicit or request from or recommend to any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney, or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerks or employees of the commission or of the board; neither shall the commissioners, or either of them, nor their secretary, clerks, agents, employees, or experts, accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts, or other gratuity, shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employee or employees, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not more than five hundred dollars, or imprisonment not more than six months, or by both such fine and imprisonment.

History: En. Sec. 31, Ch. 37, Ir. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R. C. M. 1921.

Traveling on Private Business

When members and employees of the railroad commission are traveling on private business they should pay fare. John

v. Northern Pacific Ry. Co., 42 M 18, 61, 111 P 632.

Collateral References

Carriers \$\infty 21(1), 22.
13 C.J.S. Carriers \\$\\$ 515, 516, 518, 521, 526, 542, 589, 650.

72-137. (3814) Annual reports from railroads. The board shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state, prescribe the manner in which such reports shall be made, and may require specific answers to all questions upon which the board may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the board. The board may, at such other times as it may deem necessary, require such other information, statements, or reports as may be deemed necessary, and fix the time for filing of the same.

Any railroad failing or refusing to make or file such annual report, or failing or refusing to furnish such additional information, statements, or reports, as may be demanded by the board, shall forfeit the sum of five hundred dollars for each day that such refusal or neglect shall be continued.

History: En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907; re-en. Sec. 3814, R. C. M. 1921. Carriers 9.
13 C.J.S. Carriers §§ 15, 19.

72-138. (3815) Repealed.—Chapter 93, Laws of 1969.

Repeal Section 72-138 (Sec. 33, Ch. 37, L. 1907), relating to annual report of the board of railroad commissioners, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

72-139. (3816) Duties of board—suspension of commission. It is hereby made the duty of such board to see that the provisions of this act and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. And said board shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all civil causes, original proceedings in the supreme court excepted. If any commissioner shall fail to perform his duties as provided for in this act, he may be removed from office as provided for by sections 94-5501 to 94-5516, and upon complaint made and good cause shown, the governor is authorized to suspend any commissioner or commissioners, and if, in his judgment, the exigencies of the case require, the governor is authorized to appoint temporarily some competent person or persons to perform the duties of such suspended commissioner or commissioners during the period of such suspension.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R. C. M. 1921.

Collateral References
Public Service Commissions 3, 6.
73 C.J.S. Public Utilities § 35, 39.

72-140. (3817) Existing rights of actions not affected by law. This act shall not have the effect to release or waive any right of action by the state or any person for any right, penalty, or forfeiture which may have arisen, or may hereafter arise, under any law of this state, and all penalties accruing under this act shall be cumulative to each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907; re-en. Sec. 3817, R. C. M. 1921. Collateral References Carriers \$\infty 20(1). 13 C.J.S. Carriers \square\square 451, 569.

72-141. (3818) Jurisdiction of railroad commission over docks and wharves. The supervision of docks and wharves by the board of railroad commissioners is provided for by section 89-605.

History: New section recommended by code commissioner, 1921.

Collateral References Wharves⇔12. 94 C.J.S. Wharves § 7. 56 Am. Jur. 1084, Wharves, § 26.

72-142. (3819) Railroad commission to inquire into observance of laws for safety of employees. It is hereby made the duty of the board of railroad commissioners to make inquiry into the observance by all railroads within this state of the laws of the United States and of the state of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same, and to lay complaint before the proper officer, state or federal, of any infraction of any of such laws, and to prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

History: En. Sec. 1, Ch. 115, L. 1913; re-en. Sec. 3819, R. C. M. 1921.

Collateral References
Railroads \$\infty 9(1).
74 C.J.S. Railroads \\$ 29.

72-143. (3820) Results to be stated in annual report. Said board shall, in its annual report, set out what effort it has made to carry out the provisions of this act, with the result thereof, and in detail what steps it has taken to procure to be prosecuted any violations of any such acts of which it has secured information. A copy of this annual report shall be mailed to the secretary of the department of transportation.

History: En. Sec. 2, Ch. 115, L. 1913; re-en. Sec. 3820, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1971.

Collateral References

Public Service Commissions 6. 73 C.J.S. Public Utilities § 39.

Cross-Reference

Board of railroad commissioners, written report, secs. 82-4001, 82-4002.

72-144. (3821) Repealed.—Chapter 199, Laws of 1965.

Reneal

Section 72-144 (Sec. 1, Ch. 2, L. 1917), relating to rates for the transportation of

prisoners, was repealed by Sec. 101, Ch. 199, Laws 1965.

72-145. (3822) Maintenance of loading platform by railroad. Every railroad company doing business in this state shall, within sixty days after notice from the board of railroad commissioners of the state of Montana, erect one or more platforms for the transfer of livestock, grain, and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company, after receiving notice as provided for in this section, shall fail, refuse, or neglect to erect platforms, as required by this and the following section, within the required sixty days, the said board of railroad commissioners is authorized and empowered, and it is made its duty, to notify such railroad company to appear before it at a certain time and place and show cause, if any there is, why such board of railroad commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The said board of railroad commissioners shall have power,

after such hearing, to issue an order upon said railroad company commanding it to erect such platform, if the said board of railroad commissioners shall, upon such examination and hearing, deem such platform necessary. Any notice required to be served upon any railroad company to carry out any of the provisions of this section, or similar provisions relating to the enlarging of such platforms, may be served upon any agent of said company within the state of Montana.

History: En. Sec. 1, Ch. 26, L. 1913; re-en. Sec. 3822, R. C. M. 1921.

Collateral References
Railroads©=225.
74 C.J.S. Railroads § 408.

72-146. (3823) Dimensions and other requirements of platform. Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the said board of railroad commissioners, above the rails of the track, with suitable approaches to and from such platform to admit of the driving of loaded teams thereon.

History: En. Sec. 2, Ch. 26, L. 1913; re-en. Sec. 3823, R. C. M. 1921.

72-147. (3824) Enlargement of platform. The board of railroad commissioners shall have power to order an enlargement of such platforms whenever petitioned to that effect, and whenever the capacity of such platform is, in its judgment, clearly insufficient for the accommodation of the public.

History: En. Sec. 3, Ch. 26, L. 1913; re-en. Sec. 3824, R. C. M. 1921.

72-148. (3825) Erection of scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

History: En. Sec. 4, Ch. 26, L. 1913; re-en. Sec. 3825, R. C. M. 1921.

72-149. (3826) Violation of law a misdemeanor—penalty. Every railroad company neglecting or refusing to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid.

History: En. Sec. 5, Ch. 26, L. 1913; re-en. Sec. 3826, R. C. M. 1921.

Collateral References
Railroads©=254(1).
74 C.J.S. Railroads § 437 et seq.

72-150. (3827) Rules for equipment of cars, trains, engines, and health and sanitation. The railroad commission of the state of Montana shall have full authority, after notice and hearing, to make and enforce rules and regulations providing for the installation on and equipment of trains, cars, or engines, with safety appliances, and providing for sanitation and adequate shelter as it affects the health of all railroad employees, includ-

ing, but not limited to, trainmen, enginemen, yardmen, maintenance of way employees, highway crossing watchmen, clerical, platform, freight house and express employees; and shall have authority to inspect the same and enforce regulations with regard thereto, such inspection rules and regulations to be from time to time co-extensive with the requirements of, and in conformity to, the provisions of the acts of Congress, and rules and regulations of the interstate commerce commission and the department of transportation as then effective.

History: En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1959; amd. Sec. 2, Ch. 124, L. 1971.

Collateral References

Contributory negligence as a defense to a cause of action based upon violation of statute imposing duty on railroad. 10 ALR 2d 853.

72-151. (3828) Brake equipment. The railroad commission of the state of Montana shall have the power and authority to examine and inspect all brakes and brake equipment and, after notice and hearing, to make and enforce reasonable rules and regulations with respect to the examination, inspection, and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules and regulations to be from time to time co-extensive with the requirements of and in conformity to the provisions of the acts of Congress, and rules and regulations of the interstate commerce commission and the department of transportation as then effective.

History: En. Sec. 2, Ch. 136, L. 1909; re-en. Sec. 3828, R. C. M. 1921; amd. Sec. 3, Ch. 124, L. 1971.

72-152. (3829) Industrial and commercial spurs—provisos. The railroad commission of the state of Montana shall have full power and authority, after notice and hearing, to compel railroad companies operating in the state of Montana to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities; provided, however, that any such industrial or commercial spur will not exceed one mile in length from headblock to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs; and provided further, that such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings, unless such station, yards, sidings, or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main-line operation.

History: En. Sec. 4, Ch. 136, L. 1909; re-en. Sec. 3829, R. C. M. 1921.

NOTE.—See also section 72-156, which apparently repeals by implication a part of the above section.

Collateral References

Railroads \$225. 74 C.J.S. Railroads \$412.

Construction and effect of liability exemption or indemnity clause in spur track agreement. 20 ALR 2d 711.

72-153. (3830) Proceedings in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the

rulings, orders, and regulations made or established by the commission under the provisions of this act. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad. Such proceedings shall have precedence over all other business in such courts. except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, or order is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, or order, by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper.

Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employees of the defendant, who are in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 5, Ch. 136, L. 1909; re-en. Sec. 3830, R. C. M. 1921.

Compiler's Note

The word "the" which followed "have," in the third sentence of the first paragraph, was omitted by the compiler.

Collateral References

Carriers 21; Public Service Commissions 21; Railroads 29(2).

13 C.J.S. Carriers §§ 24, 284, 304, 306, 309, 310, 390, 391, 584; 73 C.J.S. Public Utilities § 67; 74 C.J.S. Railroads § 29.

13 Am. Jur. 2d 611 et seq., Carriers, § 60 et seq.; 44 Am. Jur. 251, Railroads, § 38.

72-154. (3831) Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 6, Ch. 136, L. 1909; re-en. Sec. 3831, R. C. M. 1921.

Collateral References
Railroads \$\infty 10.
74 C.J.S. Railroads \$ 28.

72-155. (3832) Action to determine reasonableness of rule. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or, in any county where any such rule, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such rule, regulation, or order, made, fixed or established by the board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of the board affecting any railroad shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the rules, regulations, and orders, made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 7, Ch. 136, L. 1909; re-en. Sec. 3832, R. C. M. 1921.

Collateral References
Railroads \$\infty 9(2).
74 C.J.S. Railroads \ 29.

72-156. (3834) Powers of railroad commission as to stations and crossings. The board of railroad commissioners of the state of Montana shall have power and authority, in addition to all other powers hereafter vested in said board, whenever the line of one railroad or railway shall cross, intersect, or parallel (overhead, at grade, or otherwise) the railroad or railway of another company or corporation, after notice and hearing, to order and compel the installation of suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the board of railroad commissioners. And such company or corporation shall, when so ordered by the board of railroad commissioners, keep such passenger station warmed, lighted, and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. And said railroad or railway companies crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall stop such trains at said station house so located for the transfer of baggage, passengers, and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the board of railroad commissioners, and the expense of construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the board of railroad commissioners. Such corporation connecting by crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall also, when so ordered, after notice and hearing by the board of railroad commissioners, unite and connect the tracks of said several corporations so as to permit the transfer from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads; provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public. The expense of construction and

maintenance shall be apportioned, and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the board of railroad commissioners, and the expense thus incurred by the board of railroad commissioners shall be paid by the railroad or railway companies jointly interested, on such basis as the commission may order.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R. C. M. 1921.

Collateral References

Railroads 217, 225, 226.

74 C.J.S. Railroads §§ 403-409, 418, 421. 44 Am. Jur. 479 et seq., Railroads, § 254

Casual or temporary condition of station or its approaches causing injury. 10

Injury by snow or ice on platform. 10 ALR 261.

Sparks or cinders injuring passengers. 11 ÅLR 1076.

Constitutionality of statute requiring railroad to construct and maintain private crossing. 12 ALR 227.
Right to damages because of abandon-

ment of station. 23 ALR 555.

Municipal corporation's power to require railroad to eliminate grade crossings. 35 ALR 1322 and 36 ALR 1122.

Injury to passenger while passing through turnstile, door, or gate. 40 ALR

Liability of carrier of passengers for negligence in assisting them to board or alight. 55 ALR 389 and 59 ALR 940.

Constitutional power to compel railroad company to relocate or reconstruct highway crossing or to pay or contribute to expense thereof. 55 ALR 660; 62 ALR 815 and 109 ALR 768.

Duty and liability of carrier toward one accompanying departing passenger or present to meet incoming one, with respect to conditions at or about the station. 96 ALR 613.

Changed conditions as affecting duty, or enforcement of duty, as to maintenance of stations imposed upon railroad by charter or statute. 111 ALR 57.

Liability of carrier for injury to passenger as result of ice, snow or rain on exposed or interior portions of car. 117 ALR 522.

72-157. (3835) "Paralleling" defined. "Paralleling," as referred to in this act, shall be held to mean where the main tracks of parallel lines of railroad or railway are not more than two thousand feet apart, when measured from center to center.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3835, R. C. M. 1921.

72-158. (3836) Joint rates—division among carriers. Whenever the board of railroad commissioners of the state of Montana shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by such joint rate may, by agreement, provide for the distribution thereof between themselves, and in the event that the railroads, railways, or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of sixty days after the order fixing and determining such joint rate shall have been made by the board of railroad commissioners, then the said board of railroad commissioners shall have power, and it is hereby made its duty, to call a hearing, of which hearing the railroads, railways, or common carriers affected by such joint rate shall have at least twenty days' notice, and upon such hearing the board of railroad commissioners shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

History: En. Sec. 2, Ch. 105, L. 1913; re-en. Sec. 3836, R. C. M. 1921.

Carriers 193.
13 C.J.S. Carriers § 315.

72-159. (3837) Power of railroad commission as to sidetracks, stock-yards and chutes. The board of railroad commissioners of the state of Montana shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers operating within the state of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stockyards, stockchutes, or stockpens, whenever the necessity therefor has been established to the satisfaction of the commission.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R. C. M. 1921,

72-160. (3838) Enforcement of regulation in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the rulings, orders, and regulations made or established by the commission under the provisions of this act. The proceedings therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad, railway, or common carrier is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to him. If, in such action, it be the decision of the court that the rule, regulation, or order is not unreasonable or unjust, and that in refusing to comply therewith the railway, railroad, or common carrier is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation, or order by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper.

Any violation of such decree shall render the defendant, officer, agent, servant, or servants or employees of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punished by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt, until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board of railroad commissioners; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. Any appeal shall lie to the supreme court from the

decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 4, Ch. 105, L. 1913; re-en. Sec. 3838, R. C. M. 1921.

Collateral References

Carriers 18; Public Service Commissions 21; Railroads 9(2).

13 C.J.S. Carriers §§ 24, 284, 304, 306, 309, 310, 390, 391, 584; 73 C.J.S. Public Utilities § 67; 74 C.J.S. Railroads § 29. 13 Am. Jur. 2d 611 et seq., Carriers, § 60 et seq.; 44 Am. Jur. 251, Railroads, § 38.

72-161. (3839) Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 5, Ch. 105, L. 1913; re-en. Sec. 3839, R. C. M. 1921.

Collateral References
Railroads 10.
74 C.J.S. Railroads 28.

(3840) Action to determine reasonableness of rule. Any railroad, railway, or common carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such rule, regulation, or order of the board of railroad commissioners is applicable, against the said board as defendant, to determine whether or not any such rule, regulation, or order made, fixed or established by said board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of said board affecting any railroad, railway or common carrier shall be deemed final and conclusive; and provided, further, that in any action, hearing or proceeding in any court, the rules, regulations, and orders made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R. C. M. 1921.

Collateral References
Railroads \$\infty 9(2).
74 C.J.S. Railroads \\$ 29.

72-163. (3841) Penalty for failure of railroad to comply with regulations. Any railroad or railway company, or common carrier, its officers or agents, subject to the provisions of this act, who shall refuse or fail to comply with the provisions of this act, or any order, rule, or regulation relative thereto, made by the board of railroad commissioners, shall be subject to a fine of not less than twenty-five dollars, nor more than fifty dollars, and each day of such refusal or failure shall be deemed a separate offense and be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the board of railroad commissioners in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R. C. M. 1921.

Collateral References
Railroads \$\sim 254(2).
74 C.J.S. Railroads \\$\\$ 444, 445.

72-164. (3842) Railroad commission may order electric signal bells installed. Authority is hereby given to the board of railroad commissioners of the state of Montana upon petition in writing made to it by any board of county commissioners of the state of Montana, to order railroad companies to install and maintain an electrically operated bell or other signaling device at all points in the state of Montana where the main lines, spurs, or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the state of Montana, and where the contour of the country adjacent to said crossing is such that a person approaching same along said highway cannot, at a distance of twenty-five (25) feet of said crossing, obtain an unobstructed view of said railroad track for a distance of one-half (1/2) mile on either side of said crossing; or where any other hazardous conditions exist which make it advisable that electric signaling devices be installed; provided, however, all persons driving motor vehicles upon the public highways of this state, outside of corporate limits of incorporated cities or towns, where the view is obscure, or when a moving train is within sight or hearing, shall bring said vehicle to a full stop not less than ten (10) nor more than one hundred (100) feet from where said highway intersects railroad tracks within this state, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

History: En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1957.

Cross-Reference

Regulation of railroad crossings, sec. 72-701 et seq.

Contributory Negligence

Truck driver could not recover for collision with train where he could have seen or heard the train if he had taken proper precautions. Monforton v. Northern Pacific Ry. Co., 138 M 191, 355 P 2d 501, 506.

Knowledge or lack of knowledge of a custom to warn, or of the fact that customary protective signals have been abandoned or are not in operating condition, has an important bearing on the question of contributory negligence, but it does not affect the question of primary negligence. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Railroad was not liable for death of plaintiff's son, even though it had failed to put out fusees at time when car struck the train, since driver's view of the crossing was unobstructed, reflector signs warning of crossing were in well-kept condition, and there were no other extrahazardous conditions. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Duty of Driver to Stop

This section requiring a motorist, when view of railroad crossing is obscure, to stop not less than 10 nor more than 100 feet from intersection of crossing and highway does not impose on driver duty to stop within such distance from a grade crossing with the location of which driver is not familiar and which he cannot see by reason of peculiar conditions. Broberg v. Northern Pacific Ry. Co., 120 M 280, 182 P 2d 851, 860.

This section does not apply to trains which are not approaching a crossing but are actually occupying it. Broberg v. Northern Pacific Ry. Co., 120 M 280, 182 P 2d 851.

A railroad has a right to expect motorists to approach a railroad crossing with caution and is not bound to protect against the negligence of a motorist. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Motorist who was killed when car hit train at railroad crossing was negligent in that he did not comply with statutory mandate to bring his vehicle to complete stop not less than 10 nor more than 100 feet from railroad crossing when a train is within sight or hearing or if crossing and view is not clear, full and distinct. O'Brien v. Great Northern R. Co., 148 M 429, 421 P 2d 710.

Duty of Guest of Driver

The negligence of a driver in failing to stop at a railroad crossing, as required by this section, cannot be imputed to his passenger. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953. Rule does not absolve passenger from taking reasonable precaution for his own safety. Grant v. Chicago, M. & St. P. R. Co., 78 M 97, 252 P 382.

Hazardous Conditions

Railroad crossings are not made extrahazardous by number of vehicles passing over crossing, dark-colored road surfaces tending to absorb vehicle's lights or setting out of fusees by railroad. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Motorist Not Absolved from Using Reasonable Care

One of the highest obligations of railroad operators is to protect the public at highway crossings. Watchmen and warning devices are required by law and installed for the primary purpose of warning the traveling public of approaching trains or cars, but the absence of such warning devices does not excuse the negligence of the highway traveler who is charged with reasonable care in the premises under this section. Inkret v. Chicago, M., St. P. & P. R. Co., 107 M 394, 412, 86 P 2d 12.

A railroad crossing is as a matter of law a place of known danger and one is bound by law to recognize it as such. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

"Obscure" Defined

The word "obscure" as used in this section means "not clear, full or distinct." Broberg v. Northern Pacific Ry. Co., 120 M 280, 182 P 2d 851.

Outside Corporate Limits of Municipality

Crossing which was partly within city limits was not "outside" limits within meaning of this section, thus instruction on statutory duty to stop at crossing outside city limits under certain conditions was inapplicable and failure of jury to follow instruction did not require reversal of judgment. Jarvella v. Northern Pacific Ry. Co., 101 M 102, 114, 53 P 2d 446.

Railroad's Duty

The infrequent use of a railroad crossing may affect the degree of care required to be taken by the train in approach-

ing the crossing, but when the train is on the crossing, this is, in itself, a sufficient warning of danger to the traveling public and railroad is not negligent in failing to sound whistle or bell, place warning lights along train or provide flagman to warn traffic. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Collateral References

Railroads 233, 243.
74 C.J.S. Railroads §§ 428, 433.
44 Am. Jur. 599, 611, Railroads, §§ 385,

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing. 5 ALR 2d 112.

Blinding of vehicle driver by glare of

lights. 22 ALR 2d 292.

Contributory negligence of driver of motor vehicle at railroad crossing where his vision is obscured by smoke, dust, atmospheric condition, or unclear windshield. 42 ALR 2d 13.

Rights of injured guest involved in railroad crossing accident as affected by obscured vision from vehicle, 42 ALR

2d 350.

Admissibility, in railroad crossing accident case, of evidence of other functional failures of railroad crossing devices and appliances of the same kind at other times. 46 ALR 2d 935.

Handicap: duty and standard of care, with respect to contributory negligence, of person with physical handicap, such as impaired vision or hearing, approaching railroad crossing. 65 ALR 2d 703.

railroad crossing. 65 ALR 2d 703.

Lights: contributory negligence of driver of motor vehicle driven without lights or with defective or inadequate lights and struck at railroad crossing. 67 ALR 2d 147.

Last clear chance doctrine applied to cases involving collision between train and motor vehicle at railroad crossing. 70 ALR 2d 9.

Brakes: manner of timely application of proper brakes as basis of charge of contributory negligence against driver of skidding motor vehicle colliding with train, 72 ALR 2d 105.

Standing train: injury due to road vehicle running into train or car standing on highway crossing, 84 ALR 2d 813

on highway crossing. 84 ALR 2d 813.

Backing: railroad's liability for crossing collision as affected by fact that train or engine was backing or engine was pushing train. 85 ALR 2d 267.

72-165. (3843) Petition for installation—hearing and order. It shall be the duty of the board of railroad commissioners of the state of Montana,

upon the presentation of any petition by a board of county commissioners, requesting the installation of the signaling device provided for in this act, to hold a hearing, if same be demanded by the railway company or companies affected, upon due notice to all interested parties in such manner as the commission shall direct. Upon said hearing, if a hearing be demanded, or without a hearing if same has not been demanded, the commission shall make such order as it sees fit, and shall, in its discretion, order or refuse to order the installation of the signaling devices as petitioned for by said board of county commissioners.

History: En. Sec. 2, Ch. 151, L. 1919; re-en. Sec. 3843, R. C. M. 1921.

72-166. (3844) Construction and requirements of signal devices. All electric bells or other signaling devices required by this act to be installed, upon direction of the board of railroad commissioners of the state of Montana, shall be so constructed that they will operate automatically upon the approach of a train, and will commence sounding when any approaching train is at such distance from said crossing as the board of railroad commissioners may determine and order, and shall continue to sound until the train has reached said crossing.

History: En. Sec. 3, Ch. 151, L. 1919; re-en. Sec. 3844, R. C. M. 1921.

Collateral References

Customary or statutory signals from train as measure of railroad's duty as to

warning at highway crossing. 5 ALR 2d 112.

Failure of signaling device at crossing to operate as affecting railroad company's liability. 90 ALR 2d 350.

72-167. (3845) Time within which signaling device must be installed—limitation upon power of railroad commission. It shall be the duty of every person, firm, or corporation, owning or operating any line of railroad within the state of Montana, to equip its crossing with the signaling device herein described, within three months after being ordered by the board of railroad commissioners of the state of Montana so to do. Nothing herein contained shall be so construed as to authorize the board of railroad commissioners to order the installation of signaling devices, except upon petition of a board of county commissioners, and after a hearing as hereinbefore provided for.

History: En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R. C. M. 1921.

72-168. (3846) Penalty for noncompliance with order of railroad commission. Any railroad company, person, firm, or corporation failing to comply with the terms of this act, or failing to equip its lines with its signaling device herein described, when ordered by the board of railroad commissioners of the state of Montana so to do, within the time specified by said order, shall forfeit to the state of Montana the sum of fifty dollars for each and every failure to equip each crossing under its control with the signaling device required by this act, and each day's failure to comply with the terms of this act shall constitute a separate offense and shall give rise to a like liability.

History: En Sec. 5, Ch. 151, L. 1919; re-en. Sec. 3846, R. C. M. 1921.

Collateral References Railroads = 254(2). 74 C.J.S. Railroads § 444.

CHAPTER 2

RAILROAD COMPANIES-GENERAL POWERS AND DUTIES

Section 72-201. May construct and operate railroads.

Capital stock. 72-202.

72-203. Sale of delinquent stock.

Books to be opened for subscription—election of directors. 72-204.

72-205. Powers of railroad corporations.

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72-211. May borrow money and secure payment. 72-212. May buy and sell necessary real estate. May divert and cross streams and roads. 72-213.

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May lease or purchase other railroads. 72-223.

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72-225. Judgment as lien against property.

72-226. Amendment of certificate of incorporation.

72-227. Record of amendment.

72-228. Amended certificate may be amended.

72-229. May lease or buy other railroads.

Prior consolidation, sale or lease legalized.

72-201. (6503) May construct and operate railroads. Any railroad corporation shall be authorized to locate, construct, maintain, and operate a railroad with a single or double track, with such sidetracks, turnouts, machine shops, offices, and depots as may be necessary, between any points it may select within the places named in the articles of incorporation as termini of such road, and it may construct branches to any point in this state, and connect its road with that belonging to any other person or corporation, and may consolidate with any road not a parallel or competing line.

History: En. in substance, Sec. 4, p. 93, Ex. L. 1873; re-en. Sec. 302, 5th Div. Rev. Stat. 1879; re-en. Sec. 680, 5th Div. Comp. Stat. 1887; amd. Sec. 890, Civ. C. 1895; reen. Sec. 4271, Rev. C. 1907; re-en. Sec. 6503, R. C. M. 1921. Cal. Civ. C. Secs. 454-496.

Cross-References

Assessment of property for taxation, secs. 84-427, 84-428.

Corporations may construct and operate railroads, Const., Art. XV, sec. 5.

Freight line companies, taxation, sec. 84-4818 et seq.

Multi-county operations, assessment, sec.

84-801 et seq.

Regulation by cities and towns, secs. 11-913, 11-914, 11-968.

Sleeping car companies license tax, sec. 84-2301 et seq.

Eminent Domain

The provisions of this section and sections 15-810 (now repealed) and 72-205 are exceedingly liberal, but they must be interpreted in the light of section 93-9905 and the rule of necessity must be determinative of the right to take in each instance. Northern Pacific Ry. Co. v. McAdow, 44 M 547, 555, 121 P 473.

Collateral References
Railroads©1.
74 C.I.S. Roilroads 8.4

74 C.J.S. Railroads § 4. 44 Am. Jur. 199 et seq., Railroads, § 1 et seq.

72-202. (6504) Capital stock. The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of one hundred dollars each; such shares shall be regarded as personal property. An installment of ten per centum on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments, not exceeding twenty-five per centum on the capital stock, which installments shall not be called for more frequently than once in three months, and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

History: En. in substance, Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R. C. M. 1921.

Cross-Reference

Increase in capital stock, sec. 72-217.

Collateral References
Railroads 515.
74 C.J.S. Railroads 13.

72-203. (6505) Sale of delinquent stock. If any installment of stock shall remain unpaid for sixty days after the time specified for payment thereof, whether such stock is held by the original subscriber or his assignee, trustee, or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper of general circulation in this state, and by written notice sent by mail within five days after default made, to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence, or if that is not known to the secretary, then to his address as last reported by the secretary of the corporation; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner; but where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

History: En. in substance, Sec. 6, p. 94, Ex. L. 1873; re-en. Sec. 304, 5th Div. Rev. Stat. 1879; re-en. Sec. 682, 5th Div. Comp. Stat. 1887; amd. Sec. 892, Civ. C. 1895; re-en. Sec. 4273, Rev. C. 1907; re-en. Sec. 6505, R. C. M. 1921.

72-204. (6506) Books to be opened for subscription—election of directors. The persons named in said articles of incorporation, or a majority of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said corporation, at such time or times and at such place or places as they may deem expedient, after having given at least thirty days' notice in a newspaper of general circulation in this state of the time and place of opening books; and as soon as five per centum on the capital stock shall be subscribed, they may give like notice

for the stockholders to meet at such time and place, within the state, as they may designate, for the purpose of electing five or more directors, who shall continue in office until the time fixed for the annual election, which time shall be within six months from the date when such directors were elected, and until their successors are elected and qualified; at the time and place appointed directors shall be elected in the manner provided in section 15-405. After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the non-payment thereof, after the expiration of the thirty days' notice of sale hereinbefore provided for.

The persons named in such articles, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board and be competent to fill vacancies therein, make bylaws, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the bylaws of the corporation may require; and the directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties; and they may from time to time make such dividends of the actual net profits of said corporation as they may think proper, and shall hold their offices until their successors are elected and qualified.

History: En. in substance, Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R. C. M. 1921.

Compiler's Note

Section 15-405, referred to in the first paragraph of this section, was repealed by Sec. 143, Ch. 300, Laws 1967.

Number of Directors

This section fixes five as the minimum number of the directors of a railroad corporation. Great Falls & Teton County R. Co. v. Ganong, 48 M 54, 55, 136 P 390.

Collateral References

Railroads \$\infty 15, 17.
74 C.J.S. Railroads \\$\\$ 13, 15.

72-205. (6507) **Powers of railroad corporations.** Every railroad corporation has power:

- 1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employees may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto;
- 2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;
- 3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as

may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

- 4. To lay out its road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same;
- 5. To construct their road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;
- 6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in sections 93-9901 to 93-9926;
- 7. To purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in sections 93-9901 to 93-9926, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation;
- 8. To carry persons and property on their railroad, and receive tolls or compensation therefor;
- 9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight, and business;
- 10. To regulate the time and manner in which passengers and property shall be transported, and the tools and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change, or amendment by the legislative assembly at any time;
- 11. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the

management of its business transactions usual and proper for railroad corporations.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R. C. M. 1921. Cal. Civ. C. Sec. 465.

Cross-References

Consent required before construction in city or town, Const., Art. XV, sec. 12.

Diversion of stream, sec. 72-213.

Right to intersect, connect with or cross other railroad granted, Const., Art. XV, sec. 5.

Special law granting right to lay tracks forbidden, Const., Art. V, sec. 26.

Subd. 3, Acquire Real Estate

Under subdivision 3, a railroad may acquire any land necessary for the construction and maintenance of its road and its adjuncts and appendages by purchase or by voluntary grant or donation, subject only to the limitation that the right of way not exceed two hundred feet in width, except where a greater width is required for excavations and embankments, and that the land for excavations, embankments, side-tracks, turnouts, shops, etc., not exceed the amount necessary for such uses and purposes. State ex rel. Bloomington Land & Live Stock Co. v. District Court, 34 M 535, 543, 88 P 44. See Northern Pacific Ry. Co. v. McAdow, 44 M 547, 554, 121 P 473; Postal Tel.-Cable Co. of America v. Nolan, 53 M 129, 137, 162 P 169.

Subd. 4, Lay out Its Road

The language of subdivision 4, "not exceeding in width one hundred feet on each side of its center line," is not a grant but a limitation. No obligation is imposed upon any company to take the full amount permitted, and in the absence of any necessity it cannot do so, either as against the will of the owner or the necessities of a competing road. Great Falls & Teton County R. Co. v. Ganong, 48 M 43, 50, 136 P 391.

A railroad company, in projecting a route through a town, had staked a line through the center of one of its streets eighty feet wide, caused it to be mapped, and subsequently approved by its executive officer. In an action by a rival company looking to the condemnation of a strip of land sixty feet wide immediately adjoining one side of the street, the evidence was held insufficient to sustain a finding that such strip had already been appropriated by the first company for a public use of equal necessity, namely, for right of way purposes. Great Falls & Teton County R. Co. v. Ganong, 48 M 43, 136 P 391.

The mere fact that one has made substantial improvements along a railroad in the expectation of its continued operation does not burden the railroad company with an implied obligation to operate. Briggs v. Great Northern Ry. Co., 92 M 463, 465, 15 P 2d 840.

Subd. 5, Flood Damage

Liability for flood damage attaches only upon showing of railroad's negligence; where a railroad company constructs and maintains a grade across a watercourse with proper culverts in conformity with statutory requirements and so as to provide for the passage of waters reasonably to be expected in times of usual freshets, or such as are unusual but which experience shows might occur at any time, its construction or maintenance is not negligence per se; railroad is not an insurer against flood damage. Heckaman v. Northern Pacific Ry. Co., 93 M 363, 20 P 2d 258; Peel v. Chicago, M., St. P. & P. R. Co., 94 M 334, 341, 22 P 2d 617.

Railroad maintaining a bridge across a stream had duty of ordinary care for protection of life and property along course of stream, and mere fact that flood occurring in valley was unprecedented in volume and extent did not relieve railroad from liability to maintain proper bridge across stream, and whether it was negligent in failing to do so in anticipation of flood and whether negligence was proximate cause of plaintiff's damages was for jury. Northern Pacific Ry. Co. v. Wagner, 86 F 2d 63.

Subd. 5, Obstruction of Watercourses

Under the common-law rule of liability for the obstruction of surface waters, in force in this state in the absence of statute providing otherwise, defendant railway company was not liable for damage caused to plaintiff's property by surface waters which were dammed up by its embankment and for the escape of which it had failed to construct culverts or openings, its duty in this respect being confined, by this subdivision and section 72-644, to providing outlets for streams, watercourses, etc., intersected by the embankment, plaintiff's evidence having failed to establish that the invading waters were conveyed through a natural watercourse. Le Munyon v. Gallatin Valley R. Co., 60 M 517, 524, 525, 199 P 915.

R. Co., 60 M 517, 524, 525, 199 P 915.

Under the common law a railroad company was, and under this section and this subdivision, is, required to exercise the skill and knowledge ordinarily practiced in the construction of an embankment

used in connection with a bridge over a watercourse, and leave sufficient openings for the passage of such water as is known to flow in the stream in time of usual freshets, and such as experience shows might occur at any time. Heckaman v. Northern Pacific Ry. Co., 93 M 363, 377, 20 P 2d 258.

A "watercourse" within the meaning of this section is a channel cut by running water, with well-defined banks through which water flows for substantial period of each year. Heckaman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

Railroad, which quitclaimed land including right of way across irrigation ditch, was not relieved of its statutory duty to maintain the cement drop, siphon and wooden flume for the benefit of lower landowners who depended on the water. Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

Subd. 5, Restoration of Stream

Failure of railroad to restore stream crossed while constructing its road constitutes actionable negligence; duty to restore does not require that full width of channel be left open for passage of water, but may be fulfilled by widening it and deepening it to carry as much water as it did originally; the duty may not be added to by courts. Heckaman v. Northern Pacific Ry. Co., 93 M 363, 377, 20 P 2d 258.

The usefulness of or "franchise" of a nonnavigable stream which this subdivision requires railroad to restore is its use for irrigation purposes and drainage. Heekaman v. Northern Pacific Ry. Co., 93 M 363, 377, 20 P 2d 258.

Where a railroad company after exercise of reasonable care in the construction of an embankment and bridge in crossing a stream thereafter narrows the opening left for the passage of water, or subsequently

discovers that the opening is insufficient to carry away waters which may reasonably be anticipated, it must make suitable provision for such water within a reasonable time; otherwise the duty it owes under this section to restore the stream to its original usefulness is not discharged. Heckaman v. Northern Pacific Ry. Co., 93 M 363, 377, 20 P 2d 258. Instruction that "the law contemplates

some variation from the original condition of the stream and allows some diseretion in the engineers," was proper on issue of restoring stream. Wibaux Realty Co. v. Northern Pacific Ry. Co., 101 M 126, 134, 54 P 2d 1175.

Subd. 7, Eminent Domain

The provisions of this section and sections 15-810 (now repealed) and 72-201 are exceedingly liberal, but they must be interpreted in the light of section 93-9905 and the rule of necessity must be determinative of the right to take in each instance. Northern Pacific Ry. Co. v McAdow, 44 M 547, 555, 121 P 473.

Collateral References

Railroads@=18, 44-117, 214-247.

74 C.J.S. Railroads §§ 16, 45 et seq., 121

et seq., 390 et seq. 44 Am. Jur. 226-228, 285 et seq., Railroads, §§ 15, 16, 68 et seq.

Defense to cause of action based upon violation of statute imposing duty on railroad. 10 ALR 2d 853.

Construction of statutes requiring railroads to provide for the drainage or flow of waters. 19 ALR 2d 967.

Stream: liability for obstruction of stream by debris or waste causing damage by flooding or the like. 29 ALR 2d 447.

Eminent domain, spur track and the like as constituting a use for which railroad can validly exercise right of. 35 ALR 2d

72-206. (6508) Maintenance of hotel by railroad in national park and along its line. Any railway company or corporation, organizing under the laws of the United States, the state of Montana, or of any other state or territory, and owning or operating a line of railway in the state of Montana, may, in connection with its railway business, construct, acquire, own, operate, and maintain, in or on public or national parks, traversed, touched, or reached by its said line of railway in the state of Montana, and at convenient points along its said line, hotels, inns, and restaurants for the accommodation of the employees and patrons of said railway company or corporation, either in its own name or in the name of another corporation, provided that the stock of such other corporation is owned or controlled by said railway company or corporation.

72-207 RAILROADS

History: En. Sec. 1, Ch. 82, L. 1915; re-en. Sec. 6508, R. C. M. 1921.

Collateral References
Railroads \$\simes 217, 218.
74 C.J.S. Railroads \{\} 406, 416.

72-207. (6509) Right of way in canyon. Any such corporation whose right of way, or whose track upon such right of way, extends through any canyon, pass, or defile, shall not exclude any other such corporation from a passage through the same upon equitable terms, and in case of disagreement, upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction; and if the passage of any such railroad through the canyon, pass, or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by Title 93, and if it shall become necessary for any other railroad company passing through the state to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing; and when two or more companies desire to pass through the same canyon, pass, or defile, neither shall exclude the other from passing through the same, and neither shall have any compensation therefor, except the actual damage done by so doing; and should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass, or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing.

History: En. Sec. 11, p. 100, Ex. L. 1873; re-en. Sec. 309, 5th Div. Rev. Stat. 1879; re-en. Sec. 687, 5th Div. Comp. Stat. 1887; re-en. Sec. 895, Civ. C. 1895; re-en. Sec. 4276, Rev. C. 1907; re-en. Sec. 6509, R. C. M. 1921.

Injunction

Where one railroad company, duly authorized, has built its roadbed, and obtained its right of way and grounds for station buildings, machine shops, sidetracks, etc., through a defile or canyon, the court will grant an injunction in its favor, restraining another railroad cor-

poration, authorized to build to the same point, from going upon or interfering with the track or right of way of the corporation first in possession, until an adjustment of rights can be made by the court under the general railroad law. Montana Central R. Co. v. Helena & R. M. R. Co., 6 M 416, 420, 12 P 916.

Collateral References

Railroads 73(4), 80.
74 C.J.S. Railroads §§ 101, 114.
44 Am. Jur. 307, 345, Railroads, §§ 93, 131.

72-208. (6510) Survey, annual work and completion of road. Every railroad corporation shall be required to complete fifteen miles upon each of its lines, branches, or extensions, each year subsequent to the passage of this chapter, in the case of companies already organized, and each year subsequent to the filing of articles of incorporation in the case of corporations hereafter organized. But organization under this chapter shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made, and if such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter, and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. Each railroad corporation shall complete the whole line of its road within five years from the passage of this chapter, in the case of

corporations already organized, and within seven years from the date of filing articles of incorporation in the case of corporations hereafter organized. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause; and if, in his judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

History: En. Sec. 12, p. 101, Ex. L. 1873; re-en. Sec. 310, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 37, L. 1883; re-en. Sec. 688, 5th Div. Comp. Stat. 1887; amd. Sec. 896, Civ. C. 1895; re-en. Sec. 4277, Rev. C. 1907; re-en. Sec. 6510, R. C. M. 1921.

Cross-References

Constructing drains across right of way, secs. 89-2407 to 89-2409.
Eminent domain, sec. 93-9901 et seq.

Collateral References

Railroads \$32, 85. 74 C.J.S. Railroads \$\$ 18, 123.

72-209. (6511) Railroads on reservations. Any railroad corporation now or hereafter organized under the laws of this state, for the purpose of building railroads which extend upon Indian or military reservations within this state, shall not forfeit its charter, or any rights or privileges, by reason of its failure to build and complete any portion of its road upon such reservations, until a grant of a right of way therefor has been obtained from the United States, or any parties authorized in that behalf, and thereafter the provisions of this chapter shall be applicable to said corporations.

History: En. Sec. 689, 5th Div. Comp. re-en. Sec. 4278, Rev. C. 1907; re-en. Sec. Stat. 1887; re-en. Sec. 897, Civ. C. 1895; 6511, R. C. M. 1921.

72-210. (6512) May change location or grade. Whenever any corporation organized under this chapter shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

History: En. Sec. 13, p. 102, Ex. L. 1873; re-en. Sec. 311, 5th Div. Rev. Stat. 1879; re-en. Sec. 690, 5th Div. Comp. Stat. 1887; re-en. Sec. 898, Civ. C. 1895; re-en. Sec. 4279, Rev. C. 1907; re-en. Sec. 6512, R. C. M. 1921.

Collateral References

Railroads €36. 74 C.J.S. Railroads § 128 et seq.

Right to damages because of abandonment or relocation of railroad lines. 23 ALR 555.

72-211. (6513) May borrow money and secure payment. Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sum of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation.

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R. C. M. 1921; amd. Sec. 11-148, Ch. 264, L. 1963.

Collateral References

Railroads \$\infty 147-179.
74 C.J.S. Railroads \\$ 246 et seq.

72-212. (6514) May buy and sell necessary real estate. Any such corporation may acquire by purchase or gift any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right of way, or such as may be granted to aid in the construction of such road, and convey the same in such manner as the directors may prescribe, and all deeds and conveyances made by such corporation shall be signed by the president, under the seal of the corporation.

History: En. Sec. 15, p. 102, Ex. L. 1873; re-en. Sec. 313, 5th Div. Rev. Stat. 1879; re-en. Sec. 692, 5th Div. Comp. Stat. 1887; re-en. Sec. 900, Civ. C. 1895; re-en. Sec. 4281, Rev. C. 1907; re-en. Sec. 6514, R. C. M. 1921.

Collateral References

Railroads \$\infty\$62, 63, 81, 128.
74 C.J.S. Railroads \\$\\$74, 75, 115, 199
et seq.
44 Am. Jur. 285 et seq., Railroads, \\$68
et seq.

72-213. (6515) May divert and cross streams and roads. It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed; but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

History: En. Sec. 16, p. 103, Ex. L. 1873; re-en. Sec. 314, 5th Div. Rev. Stat. 1879; re-en. Sec. 693, 5th Div. Comp. Stat. 1887; re-en. Sec. 901, Civ. C. 1895; re-en. Sec. 4282, Rev. C. 1907; re-en. Sec. 6515, R. C. M. 1921.

Cross-Reference

Restoration of stream, sec. 72-205(5).

Collateral References
Railroads \$\sim 107.
74 C.J.S. Railroads \$ 185 et seq.

72-214. (6516) Principal office. Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and may change the same at pleasure, giving public notice in one or more newspapers in the state having the largest circulation, and notice to the secretary of state of such establishment or change.

History: En. Sec. 17, p. 103, Ex. L. 1873; re-en. Sec. 315, 5th Div. Rev. Stat. 1879; re-en. Sec. 694, 5th Div. Comp. Stat. 1887; re-en. Sec. 902, Civ. C. 1895; re-en. Sec. 4283, Rev. C. 1907; re-en. Sec. 6516, R. C. M. 1921.

Collateral References

Railroads \$ 8 et seq.

72-215. (6517) May maintain telegraph line. Any such corporation is hereby authorized to construct, maintain, and operate a telegraph line along its road. The provisions of this chapter concerning the grant for station buildings, workshops, depots, machine shops, switches, sidetracks, turntables, and water stations shall not apply to mineral lands of the United

States, or to lands reserved by the United States, nor to any lands as against the United States.

History: En. Sec. 18, p. 103, Ex. L. 1873; re-en. Sec. 316, 5th Div. Rev. Stat. 1879; re-en. Sec. 695, 5th Div. Comp. Stat. 1887; re-en. Sec. 903, Civ. C. 1895; re-en. Sec. 4284, Rev. C. 1907; re-en. Sec. 6517, R. C. M. 1921.

Collateral References
Railroads©=73(1).
74 C.J.S. Railroads § 98 et seq.

72-216. (6518) State not responsible for debts of railroad. Nothing in this chapter shall be construed to make the state, or any municipality therein, liable for any debts or obligations of any character which may be contracted by such corporations.

History: En. Sec. 19, p. 104, Ex. L. 1873; re-en. Sec. 317, 5th Div. Rev. Stat. 1879; re-en. Sec. 696, 5th Div. Comp. Stat. 1887; re-en. Sec. 904, Civ. C. 1895; re-en. Sec. 4285, Rev. C. 1907; re-en. Sec. 6518, R. C. M. 1921.

Cross-Reference

State or county not to incur indebtedness for railroad, Const., Art. V, sec. 38.

Collateral References

Railroads \$34. 74 C.J.S. Railroads \$32. 44 Am. Jur. 265 et seq., Railroads, \$49 et seq.

72-217. (6519) May increase capital stock. If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors, upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

History: En. Sec. 21, p. 104, Ex. L. 1873; re-en. Sec. 319, 5th Div. Rev. Stat. 1879; re-en. Sec. 698, 5th Div. Comp. Stat. 1887; re-en. Sec. 906, Civ. C. 1895; re-en. Sec. 4287, Rev. C. 1907; re-en. Sec. 6519, R. C. M. 1921.

Collateral References

Railroads \$15. 74 C.J.S. Railroads \$13.

72-218. (6520) May accept provisions of act of Congress. Any such corporations may accept the provisions of any act of Congress providing for the creation of bodies corporate for the purposes aforesaid, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

History: En. Sec. 22, p. 104, Ex. L. 1873; re-en. Sec. 320, 5th Div. Rev. Stat. 1879; re-en. Sec. 699, 5th Div. Comp. Stat. 1887; re-en. Sec. 907, Civ. C. 1895; re-en. Sec. 4288, Rev. C. 1907; re-en. Sec. 6520, R. C. M. 1921.

Collateral References

Railroads \$\ 177. 74 C.J.S. Railroads \$\ 11, 313.

72-219. (6521) Penalties—exorbitant and discriminatory rates—equipment requirements—posting rates—transporting dangerous materials with passengers—excessive speed—whistle and bell requirements—reports. If any railroad corporation within this state shall ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter or passenger, or make any unjust discrimination in its rates, or shall neglect to provide comfortable and convenient cars

or coaches for the transportation of its passengers and their baggage, or safe cars for the transportation of express matter and freight, or shall use any highly inflammable oils for lighting any car on its passenger trains, or shall willfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this state, or shall transport within this state on any of its passenger cars any oil of vitriol, gunpowder, lucifer matches, nitroglycerine, glynon oil, nytroleum or blasting oil, or nitrate oil, or powder mixed with any such oil, or fibre saturated therewith, or duolin or giant powder, or blasting powder, or any other goods of a dangerous nature, or in any incorporated city or town in this state run any train at a rate of speed forbidden by the laws of this state, or the ordinances of such city or town, or run any train over any unsafe bridge, trestlework, or aqueduct in this state; or fail to have upon any locomotive in use by it in this state a bell and whistle in fit condition for use thereon; or shall permit any locomotive to approach any highway, road, or railroad crossing, without causing the whistle to be sounded at a point between fifty and eighty rods from the crossing, and the bell to be rung from said point until the crossing is reached; or shall willfully fail to make any report herein required, or which may be hereafter required by any law of this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined for the first offense in the sum of one thousand dollars, and for the second violation of the same provision, two thousand dollars, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than five nor more than ten thousand dollars.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1929.

NOTES.—The portion of this section held void for uncertainty in Jarvella v. Northern Pacific Ry. Co., 101 M 102, 110, 53 P 2d 446, is omitted from this compilation.

Section 94-35-175 provides a minimum penalty for violation of this section which is different from the minimum penalty herein provided.

Contributory Negligence

Railroad's failure to obey statute does not excuse citizen from use of at least ordinary diligence and prudence. Hunter v. Montana Central Ry. Co., 22 M 525, 531, 57 P 140; Sprague v. Northern Pacific Ry. Co., 40 M 481, 489, 107 P 412.

Effect of Specific Indemnity Clause in

A specific indemnity clause in a lease agreement between a railroad and a lessee which provided that the lessee would indemnify the railroad for claims, "whether due or not due to the negligence" of

the railroad, was not invalid as applied to action against railroad for injuries allegedly received because of a violation of this section by the railroad. Ryan Mercantile Co. v. Great Northern Ry. Co., 294 F 2d 629, affirming 186 F Supp 660.

Warning Signal

It is negligence for a railroad to permit its trains to approach a crossing without sounding the whistle and ringing the bell. Hunter v. Montana Central Ry. Co., 22 M 525, 531, 57 P 140; Sprague v. Northern Pacific Ry. Co., 40 M 481, 107 P 412; Stroud v. Chicago, M. & St. P. R. Co., 75 M 384, 243 P 1089.

Evidence of failure of railroad to give proper signals of the approach of its trains at crossings makes out a prima facie case of negligence. Hunter v. Montana Central Ry. Co., 22 M 525, 531, 57 P 140; Sprague v. Northern Pacific Ry. Co., 40 M 481, 489, 107 P 412; De Atley v. Northern Pacific Ry. Co., 42 M 224, 230, 112 P 76. See Kelley v. John R. Daily Co., 56 M 63, 72, 181 P 326.

A variance between an averment that defendant railroad was negligent in failing to give any warning of the approach

of one of its trains and evidence which tended to show that, while warning was given, it was not until the train was with-

in about one hundred feet from the crossing was immaterial. De Atley v. Northern Pacific Ry. Co., 42 M 224, 230, 112 P 76.

Where a person, seeing a train approaching, is killed in an endeavor to effect a crossing ahead of the train, failure of the enginemen to ring the locomotive bell or sound the whistle, though punishable as a misdemeanor, is not a proximate cause of the death. Melzner v. Chicago, M. & St. P. R. Co., 51 M 487, 492, 153 P 1019.

The burden of proving that defendant railway company's enginemen on approaching a highway crossing did not sound the locomotive whistle or ring the bell may be sustained by plaintiff's negative testimony, provided the attendant circumstances were such as to have afforded him a reasonable opportunity to hear the warning signals, if given. Grant v. Chicago, M. & St. P. R. Co., 78 M 97, 110, 252 P 382.

While it may be conceded that a locomotive engineer who, on approaching a crossing, observes that signals are not heard or that his train is not seen by one crossing must give such additional signals as an ordinarily prudent man would deem necessary, refusal to give such an instruction held not error as not warranted by the evidence. Norton v. Great Northern Ry. Co., 85 M 270, 280, 290, 278 P 521.

Failure of railroad employees in charge of engine to sound whistle was not proximate cause of collision where motorist struck unlighted second passenger car of train stopped on crossing; the mere alleged failure of signal at crossing to function at time of collision was not evidence of negligence on part of railroad where it inspected signals daily and found no defect in them and where they were in good order and functioned properly a few hours before and a few hours after collision, and in absence of knowledge, the railroad was not under duty to place servant or light or other signal at or near crossing to warn of presence of train on crossing. Northern Pacific Ry. Co. v. Bacon, 91 F 2d 173, 175, cert. den. 302 U S 730, 82 L Ed 564, 58 S Ct 55.

Collateral References

Carriers 20, 21; Railroads 212, 254, 255.

13 C.J.S. Carriers §§ 451 et seq., 514 et seq., 569; 74 C.J.S. Railroads §§ 194, 437 et seq., 456 et seq.; 75 C.J.S. Railroads § 1005.

44 Am. Jur. 254, Railroads, § 40.

Posting of rates, validity and construction of statute or ordinance requiring. 89 ALR 2d 952.

Validity, construction, and effect of agreement, in connection with real estate lease or license by railroad, for exemption from liability or for indemnification by lessee or licensee, for consequences of railroad's own negligence. 14 ALR 3d 446.

DECISIONS UNDER FORMER LAW

Portion Void for Uncertainty

Portion of section making it incumbent upon a railroad to light its tracks in any city in the state, without indicating where lights must be installed or the kind or character of lights to be used was so vague and uncertain as to render it void. Jarvella v. Northern Pacific Ry. Co., 101 M 102, 110, 53 P 2d 446.

72-220. (6522) Annual report—what to contain. It is hereby made the duty of the president or other officer in charge of each and every railroad corporation having a line of railroad in this state, to make an annual report to the state auditor for the year ending on the thirtieth day of November preceding, which report shall be verified by the oath or affirmation of such president or other officer in charge, and be filed in the office of the state auditor by the first day of December in each year, and shall state:

- 1. The amount of capital stock paid in;
- 2. The amount of capital stock unpaid;
- 3. The amount of funded debt;
- 4. The amount of floating debt;
- 5. Cost of construction;
- 6. Cost of right of way;
- 7. Cost of equipment;

- 8. All other items embraced in cost of road and equipment, not embraced in three preceding items:
 - 9. Total cost of road and equipments to date;
 - 10. Length of single main track, laid with iron or steel;
 - 11. Length of double main track, and width of gauge;
- 12. Length of branches, stating whether they have single or double tracks;
- 13. Aggregate length of sidings, and other tracks not above enumerated; total length of iron and steel, each separately stated, embraced in preceding items;
- 14. The maximum grade, with its length in main road, and also in branches:
- 15. The shortest radius of curvature, with length of curve in main road, and also in branches;
 - 16. Total degrees of curvature in main road, and also in branches;
 - 17. Total length of straight line in main road, and also in branches;
 - 18. Number of wooden bridges, and aggregate length in feet;
 - 19. Number of iron bridges, and aggregate length in feet;
 - 20. Number of stone bridges, and aggregate length in feet;
 - 21. The number of wooden trestles, and aggregate length in feet;
 - 22. The greatest age of wooden bridges;
 - 23. The average age of wooden bridges;
 - 24. The greatest age of wooden trestles;
- 25. The number and kind of new bridges built during the year, and length in feet;
 - 26. The length of road unfenced on either side, and the reason therefor;
 - 27. Number of engines:
 - 28. Number of passenger cars;
 - 29. Number of express and baggage cars;
 - 30. Number of freight cars;
 - 31. Number of other cars;
 - 32. The highest rate of speed allowed by express and passenger trains;
- 33. The highest rate of speed allowed by mail and accommodation trains;
 - 34. The highest rate of speed allowed by freight trains;
- 35. The rate of fare for passengers charged for the respective classes per mile;
- 36. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local;
 - 37. The length of new iron or steel laid during the year:
 - 38. The length of rerolled iron laid during the year;
 - 39. The number of miles run by passenger trains;
 - 40. The number of miles run by freight trains;
 - 41. The number of passengers (all classes), carried in cars;
 - 42. The number of tons of through freight carried;
 - 43. The number of tons of local freight carried;
 - 44. The number of tons of ore, cattle, and grain transported;
 - 45. The value of coin, bullion, and dust carried;
 - 46. Earnings from transportation of passengers;

- 47. Earnings from transportation of freight;
- 48. Earnings from mail and express;
- 49. Earnings from all sources. Total earnings for the year;
- 50. Expenditures for construction and new equipments;
- 51. Expenditures for maintenance of way and structure;
- 52. Expenditures for maintaining and operating motive power and cars;
- 53. Expenditures for transportation expenses, including those of stations and trains;
 - 54. Expenditures for dividends, rate per cent; and amount;
- 55. All other expenditures, either for management of road, maintenance of way, motive powers, and cars, and for other purposes. Total expenditure during the year;
- 56. The number and kind of farm animals killed; and the amount of damages paid therefor;
- 57. A statement of all casualties resulting in injuries to persons, and the extent and causes thereof, and such other and further information as may be required by the state auditor; but if any corporation shall be unable to furnish the required information, the reason thereof shall be given. The state auditor shall prepare and furnish to each railroad corporation, or to each organization having one or more railroads in charge, blank forms for making the reports required by this chapter, which blanks may be so prepared by the auditor as to obtain the information required by this section more in detail, or omit such of a historical or permanent character as may have been given in previous reports.

History: En. Sec. 24, p. 106, Ex. L. 1873; re-en. Sec. 322, 5th Div. Rev. Stat. 1879; re-en. Sec. 701, 5th Div. Comp. Stat. 1887; re-en. Sec. 909, Civ. C. 1895; re-en. Sec. 4290, Rev. C. 1907; re-en. Sec. 6522, R. C. M. 1921. Cal. Civ. C. Sec. 480.

Collateral References
Railroads \$\infty\$-9.
74 C.J.S. Railroads \\$ 29.

72-221. (6523) May extend line into Montana. Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory whose line of railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state, or building any such branch road, or any such continuation, such corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch, or continuation, in the manner provided in sections 15-108 and 15-109, and file a copy of such record, certified by the president and secretary, in the office of the secretary of the state, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate such extension, and build, maintain, and operate such branch or continuation, which it would have had if it had been incorporated for such purposes under the general laws of the state or territory of Montana.

72-222 RAILROADS

History: En. Sec. 702, 5th Div. Comp. Stat. 1887; re-en. Sec. 910, Civ. C. 1895; re-en. Sec. 4291, Rev. C. 1907; re-en. Sec. 6523, R. C. M. 1921.

Compiler's Note Sections 15-108 and 15-109, referred to in this section, were repealed by Sec. 143, Ch. 300, Laws 1967.

Collateral References
Railroads \$\infty 33(1).
74 C.J.S. Railroads \ \ 19 et seq.

72-222. (6524) Two or more may consolidate. Any two or more railroad corporations whose respective lines, not being parellel or competing lines, are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana, or of the United States, or of any other state or territory, when their respective lines of road or any branch thereof so connect within this state that they may operate together as one property, may consolidate their capital stock, franchises, and property, and thereby become one corporation by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner following: Articles of agreement shall be entered into by and between such corporations under their respective corporate seals and the signatures of their respective presidents and secretaries, containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including the name of the corporation resulting from such consolidation, the amount of its capital stock, the number and amount of shares thereof, the manner of retiring the shares of the capital stock of the corporations so consolidated, or of converting the same into or exchanging it for the capital stock of such resultant corporation, the number which shall constitute the board of directors of such corporation, and what officers it shall have, and the persons who shall constitute the first board of directors and officers thereof, their term of office, and the manner in which their successors shall be elected, which shall be according to the provisions of section 15-405, and such other matters as may be deemed necessary to perfect such consolidation, and as may be agreed upon. Such articles of agreement shall, before the same shall be effectual, be assented to, approved, or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders, or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least three-fifths in amount of the outstanding capital stock of such corporations, respectively.

A duplicate of such articles of agreement, together with a copy of the resolutions so adopted by the stockholders of such corporations assenting to, approving, or ratifying the same, certified under the corporate seal and the signature of the secretary, and verified by a sworn statement of the president and secretary of the corporation, stating that such resolution was duly adopted by the vote in favor thereof of the holders of three-fifths in amount of the outstanding capital stock of the corporation, at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state, and it shall be the duty of the secretary to record the same upon presentation for that purpose; and upon the filing thereof for record, as aforesaid, the corporation formed by such

consolidation shall be a corporation by the corporate name mentioned in such articles of agreement, and as such shall be perpetual, and shall succeed to and have, own, possess, exercise, and enjoy all the powers, rights, franchises, privileges, immunities, and property of every name and nature possessed by the corporations so consolidated, or to which they were entitled at the time of such consolidation, and shall be entitled to have, own, hold, exercise, possess, and enjoy all the powers, rights, franchises, privileges, and immunities which may at any time appertain to railroad corporations under the general laws of this state.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R. C. M. 1921. Cal. Civ. C. Sec. 473.

Compiler's Note

Section 15-405, referred to in the first paragraph, was repealed by Sec. 143, Ch. 300, Laws 1967.

Cross-References

Consolidation of domestic corporation with foreign does not divest state of jurisdiction, Const., Art. XV, sec. 15.

Consolidation with parallel or competing line prohibited, Const., Art. XV, sec. 6.

T.eases.

The provisions of this section and section 72-223 which limit the right of rail-

road companies to lease their roads to one another to such companies as are not parallel or competing roads were repealed by section 72-229. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 233, 53 P 623, 45 LRA 271.

This section is not merely a legislative declaration of the manner of consolidation, but serves as a definition as well. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 242, 53 P 623, 45 LRA 271.

Collateral References

Railroads \$\infty 140-144.
74 C.J.S. Railroads \$ 234 et seq.
44 Am. Jur. 539 et seq., Railroads,
§ 316 et seq.

Judicial power in respect to consolidation or merger of railroads. 51 ALR 1249.

72-223. (6525) May lease or purchase other railroads. Any railroad corporation whose line is wholly or partly within this state, or reaches the boundary line thereof, whether chartered by or organized under the laws of the state or territory of Montana, or the United States, or of any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances thereto; provided, the railroad or line of railroad so leased or purchased is continuous of or connected with its own line, and not a parallel or competing line. Before any such lease or purchase shall be effectual, it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders, by the holders of three-fifths in amount of all the outstanding capital stock of the company; and any such railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana, or of the United States, or of any other state or territory, may take, purchase, hold, sell, and dispose of, or guarantee the payment of the capital stock, bonds, and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line. Leases heretofore made in conformity to the provisions of this chapter shall, when ratified as herein provided, be held valid in like manner as if made by authority thereof.

History: En. Sec. 704, 5th Div. Comp. re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. Stat. 1887; re-en. Sec. 912, Civ. C. 1895; 6525, R. C. M. 1921. Cal. Civ. C. Sec. 473a.

Leases

The provisions of this section and section 72-222 which limit the right of railroad companies to lease their roads to one another to such companies as are not parallel or competing roads were repealed by section 72-229. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 233, 53 P 623, 45 LRA 271.

Collateral References

Railroads = 125-134.

74 C.J.S. Railroads §§ 199, 208. 44 Am. Jur. 551 et seq., Railroads, 327 et seq.

Liability of lessee of railroad for debts of predecessor. 15 ALR 1112 and 149 ALR 787.

Public utility commission's power to require railroad company to grant or renew leases or other privileges. 47 ALR 109.

72-224. (6526) May issue and secure bonds. Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities, or obligations, and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises, as the board of directors may determine or direct.

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R. C. M. 1921; amd. Sec. 11-149, Ch. 264, L. 1963.

Collateral References

Railroads \$249 et seq.

72-225. (6527) Judgment as lien against property. A judgment against any railroad corporation for any injury to person or property, or for material furnished, or work or labor done upon any of the property of such corporation, shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed provided for in this chapter.

History: En. Sec. 707, 5th Div. Comp. Stat. 1887; re-en. Sec. 914, Civ. C. 1895; re-en. Sec. 4295, Rev. C. 1907; re-en. Sec. 6527, R. C. M. 1921.

Street Railroads

This section has no application to street railroads. Daly Bank & Trust Co. v. Great Falls Street R. Co., 32 M 298, 303, 80 P 252; Helena Light & R. Co. v. City of Helena, 47 M 18, 36, 130 P 446; Massa-

chusetts Loan & Trust Co. v. Hamilton, 88 Fed 588, 595; Central Trust Co. v. Warren, 121 Fed 323, 324.

Collateral References

Railroads = 159-161, 171.
74 C.J.S. Railroads §§ 267 et seq., 295 et seq.
44 Am. Jur. 282-284, Railroads, §§ 66, 67.

72-226. (6528) Amendment of certificate of incorporation. Any corporation heretofore formed, or which may hereafter be formed, under the provisions of chapter twenty-five, of the fifth division of the Compiled

Statutes of Montana, relating to railway corporations, may, by a majority vote of its board of directors, and by the assent of its stockholders, representing at least two-thirds of the subscribed capital stock of such corporation, expressed in writing, or at a general or special meeting of stockholders, amend its certificate of incorporation in any one or more of the following particulars, to wit: By more particularly describing the general route of its road, or any part thereof, or by correcting or supplying any defect, mistake, or insufficiency in the description thereof, contained in said certificate, by describing any change or changes in its route, or any additions or extensions to or of its line of road, by adding thereto or extending the same to points or termini other than those mentioned in the original certificate of incorporation.

History: En. Sec. 1, p. 147, L. 1893; re-en. Sec. 920, Civ. C. 1895; re-en. Sec. 4296, Rev. C. 1907; re-en. Sec. 6528, R. C. M. 1921.

of Montana, 1887, Sections 677 through 708. Sections 677 through 679 do not appear in subsequent compilations.

NOTE.—The provisions referred to in this section are of the Compiled Statutes

Collateral References
Railroads 529.
74 C.J.S. Railroads 18.

(6529) Record of amendment. A copy of such amendment or of the original certificate of incorporation, as amended, and a copy of the resolution of the board of directors adopting the same, certified by the president and secretary of the company, under the corporate seal, to be correct and to have been adopted by a majority vote of the directors of the company, and to have been assented to in writing or by vote of stockholders representing at least two-thirds of the subscribed capital stock of the company, shall be filed with and recorded by the secretary of state; and a like copy, certified as aforesaid, shall be filed with and recorded by the county clerk and recorder of the county in which the principal place of business of the company is or shall be situated; and from the time of such filing, said original certificate of incorporation shall be deemed to be amended accordingly, and said corporation shall have the same rights and powers, and it and the stockholders thereof shall be subject to the same liabilities, as if such amendment had been embraced in the original articles or certificate of incorporation.

History: En. Sec. 2, p. 147, L. 1893; 4297, Rev. C. 1907; re-en. Sec. 6529, R. C. re-en. Sec. 921, Civ. C. 1895; re-en. Sec. M. 1921.

72-228. (6530) Amended certificate may be amended. Said certificate and amended certificate may be amended in like manner, whenever deemed expedient or necessary by the board of directors and stockholders of the company.

History: En. Sec. 3, p. 147, L. 1893; 4298, Rev. C. 1907; re-en. Sec. 6530, R. C. re-en. Sec. 922, Civ. C. 1895; re-en. Sec. M. 1921.

72-229. (6531) May lease or buy other railroads. Any railroad company now or hereafter incorporated pursuant to the laws of this state, or of the United States, or of any state or territory of the United States, may at any time, by means of subscription to the capital stock of any other rail-

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road company, or by the purchase of its stock or bonds, or by guaranteeing its bonds, or otherwise, aid such company in the construction of its railroad within or without this state; and any company owning or operating a railroad within this state may extend the same into any other state or territory, and may build, buy, lease, or may consolidate with any railroad or railroads in such other state or territory, or with any other railroad in this state, and may operate the same, and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; or any railroad company may sell or lease the whole or any part of its railroad or branches within this state constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States, or of this state, or of any other state or territory of the United States; or any railroad company incorporated or existing under the laws of the United States, or of any state or territory of the United States, may extend, construct, maintain, and operate its railroad, or any portion or branch thereof, into and through this state, and may build branches from any point, or such extension to any place or places within this state; and the railroad company of any other state or territory of the United States which shall so purchase or lease a railroad, or any part thereof in this state, or shall extend or construct its road, or any portion or branch thereof, in this state, shall possess and may exercise and enjoy, as to the control, management, and operation of the said road, and as to the location, construction, and operation of any extension or branch thereof all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain.

Such purchase, sale, consolidation with or lease, may be made, or such aid furnished, upon such terms or conditions as may be agreed upon by the directors or trustees of the respective companies; but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders' meeting, or at a special meeting of the stockholders called for that purpose, or by approval in writing of a majority in interest of the stockholders of each company respectively; provided, that nothing in the foregoing provisions shall be held or construed as curtailing the right of this state, or the counties through which any such road or roads may be located, to levy and collect taxes upon the same, and upon the rolling stock thereof, in conformity with the provisions of the laws of this state upon that subject; and all roads or branches thereof in this state, so consolidated with, purchased, or leased, or aided, or extended into the state, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state; and any corporation of another state or territory or of the United States, being the purchaser or lessee of a railroad within this state, or extending its railroad, or any portion thereof, into or through this state, shall establish and maintain an office or offices. in this state at some point or points on its line, at which legal process and notice may be served, as upon railroad corporations of this state; provided, further, that before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this act, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 1, p. 157, L. 1893; re-en. Sec. 923, Civ. C. 1895; re-en. Sec. 4299, Rev. C. 1907; re-en. Sec. 6531, R. C. M. 1921.

Cross-References

Consolidation of domestic corporations with foreign does not divest state of jurisdiction, Const. Art. XV, sec. 15.

Consolidation with parallel or competing

line prohibited, Const. Art. XV, § 6.

Filing of Charter or Articles

If a foreign railroad company, engaged as a common carrier of passengers between different states, seeks to engage in interstate commerce in this state, buys or is about to buy out another railroad, and seeks to avail itself of the benefits of this section, which requires the filing of its charter or articles of incorporation with the secretary of state, it is not obliged to pay a fee, under section 25-102, for the filing of articles of incorporation, on the basis of a percentage of its entire capital stock; the exaction of such a fee would be an unauthorized burden upon interstate commerce. Chicago, M. & St. P.

R. Co. v. Swindlehurst, 47 M 119, 126, 130 P 966. See State ex rel. General Electric Co. v. Alderson, 49 M 29, 31, 140 P 82.

Parallel and Competing Roads

This section repeals sections 72-222 and 72-223, ante, so far as they limit the right of railroad companies to lease their roads to one another to such companies as are not parallel or competing roads. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 233, 53 P 623, 45 LRA 271.

Under this section, one railroad company can lease its road to a parallel and competing road for a term of ten years, and such lease is not a consolidation of the two roads within the meaning of the constitution. This section is to be read as merely authorizing the amalgamation or consolidation of railroads not forbidden to amalgamate or consolidate by the constitution. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 234, 53 P 623, 45 LRA 271.

Collateral References

Railroads = 118 et seq. 74 C.J.S. Railroads § 197 et seq.

72-230. (6532) Prior consolidation, sale or lease legalized. Any consolidation by sale or otherwise, or any lease or agreement to sell, consolidate with, or lease the whole or any part of any railroad and its branch lines organized under the laws of this state, with the franchise appertaining thereto, to any railroad company organized or existing under the laws of the United States, or of this state, or any other state or territory, or any consolidation between such companies organized under the laws of the United States, or of this state, or any other state or territory, and a corporation organized under the laws of this state, heretofore executed by the proper officers of the companies, parties to such sale, lease, or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution.

History: En. Sec. 2, p. 158, L. 1893; re-en. Sec. 924, Civ. C. 1895; re-en. Sec. 4300, Rev. C. 1907; re-en. Sec. 6532, R. C. M. 1921.

Collateral References

Railroads 125-134, 140-144. 74 C.J.S. Railroads §§ 208, 235 et seq.

CHAPTER 3

LEASES, SALES AND MORTGAGES OF RAILROAD EQUIPMENT AND ROLLING STOCK

(Repealed-Section 3, Chapter 53, Laws of 1947; Section 10-102, Chapter 264, Laws of 1963)

72-301 to 72-307. (6533 to 6539) Repealed.

Repeal

Sections 72-301 to 72-307 (Secs. 1 to 4, pp. 101, 102, L. 1883; Secs. 1 to 3, pp. 148, 149, L. 1893; Sec. 1, Ch. 148, L. 1923; Secs. 1, 2, Ch. 53, L. 1947; Sec. 14, Ch. 117, L. 1961), relating to leases, sales and mortgages of equipment and rolling stock, were repealed by Sec. 3, Ch. 53, Laws 1947; Sec. 10-102, Ch. 264, Laws 1963.

CHAPTER 4

LIABILITY OF RAILROADS FOR KILLING OR INJURING LIVESTOCK

Fences and cattle guards.

72-402. Liable for injury from negligence.

72-403. Designation of station where records are kept.

72-404. Penalty for violation of preceding section.

72-405. Attorney's fee allowed, except when. 72-406. Company may deposit value of animal.

72-407. Payment of claim for damages to state livestock commission.

72-408. Penalty for driving animal or animals upon track. 72-409. Carcass and hide of animal. 72-410. Penalty for violation.

72-411. Shipment of livestock-notice of injury.

72-401. (6540) Fences and cattle guards. Railroad corporations must make and maintain a good and legal fence on both sides of their track and property, and maintain, at all crossings, cattle guards over which cattle or other domestic animals cannot pass. In case they do not make and maintain such fence and guards, if their engines or cars shall kill or maim any cattle or other domestic animals upon their line of road, they must pay to the owner of such cattle or other domestic animals, in all cases, a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed; provided, that nothing herein shall be construed so as to prevent any person or persons from recovering damages from any railroad corporation for its negligent killing or injury to any cattle, or other domestic animals, at spurs, sidings, Y's, crossings, and turntables.

History: Ap. p. Sec. 1, p. 267, L. 1891; en. Sec. 950, Civ. C. 1895; amd. Sec. 1, Ch. 29, L. 1905; amd. Sec. 1, Ch. 59, L. 1907; re-en. Sec. 4808, Rev. C. 1907; re-en. Sec. 6540, R. C. M. 1921. Cal. Civ. C. Sec. 485.

Cross-References

Eminent domain, cost of cattle guards and fences, secs. 93-9912, 93-9917.

Failure to maintain cattle guard, penalty, sec. 94-35-174.

Killing of livestock by railroads, penalty, sec. 94-35-174.

Penalty for failure to provide cattle

guards at crossings through fences, sec. 72-

Penalty for violations, sec. 94-35-174.

Duty as to Private Crossing and Gate

Where, for the convenience of a ranch owner, railroad constructed a private crossing and a gate in its right of way, the railroad was, under this section, bound to see that it was not left open by persons passing through it, failure in this respect constitutes negligence per se. Scheffer v. Chicago, M. & P. S. R. Co., 53 M 302, 305, 163 P 565.

General Duty To Fence

The duty to fence railway tracks may exist, not by virtue of the fencing statute, but because of the railway company's common-law obligation to exercise ordinary care to furnish its employees with a reasonably safe place in which to work, and whether it does exist depends upon the presence of circumstances which may render such precaution necessary. Alexander v. Great Northern Ry. Co., 51 M 565, 575, 154 P 914, LRA 1918E 852, appeal dismissed in 246 U S 276, 62 L Ed 713, 38 S Ct 237.

Highway Crossings

This section, making it incumbent upon railroads to maintain good and legal fences on both sides of their track and property, impliedly excepts highway crossings, at which, however, they must install cattle guards made effective by wing fences on both sides of the highway. Bowers v. Chicago, M. & St. P. R. Co., 61 M 200, 206, 201 P 825.

Not Applicable to Sidings or Spurs

Under this section a railroad is not required to fence its tracks at spurs or sidings, and is liable for injuries to livestock at such places only where its actual negligence is established. Knop v. Chicago, M. & St. P. R. Co., 57 M 288, 187 P 1020.

Not Applicable to Station Grounds

No duty devolves upon a railroad to fence at a station under statutes of this nature. Beaudin v. Oregon Short Line R.

Co., 31 M 238, 241, 78 P 303.

Railroad tracks at depot and station grounds where passengers and freight are received and discharged, where employees are required to pass continuously back and forth, and where public convenience requires free and unobstructed access are impliedly excepted from the requirements of fencing made by this section. Bowers v. Chicago, M. & St. P. R. Co., 61 M 200, 206, 201 P 825.

Not Liable for Death of Child for Failure To Fence

The failure of a railroad to maintain a fence along its tracks does not render it liable, on that ground, for the death of a child, who entered upon the unfenced track and was struck by a train. Nixon v. Montana, W. & S. Ry. Co., 50 M 95, 101, 145 P 8, Ann Cas 1916B 299.

Sufficiency of Complaint

In an action against a railroad for killing of livestock, it is necessary that the complaint allege plaintiff's ownership or possession of land along or through which the railroad runs, and that the stock was killed at such place. Beau-din v. Oregon Short Line R. Co., 31 M 238, 241, 78 P 303; Metlen v. Oregon Short Line R. Co., 33 M 45, 46, 81 P 737. No allegation of defendant's negligence

in the operation of its trains is necessary to render it liable under statutes of this character. Beaudin v. Oregon Short Line R. Co., 31 M 238, 241, 78 P 303.

Where, in an action against a railroad company for killing livestock, the only evidence was that the animals were found near the track, one dead and the other injured so badly that it had to be killed, and no showing was made as to the character of the injuries except that one had its legs broken, such evidence was insufficient to show that the animals were killed by an engine or cars of defendant. Beaudin v. Oregon Short Line R. Co., 31 M 238, 78 P 303.

In an action against a railroad for damages sustained by plaintiff in killed and injured cattle because of railroad's negligence in failing to see that a private gate, which had been constructed by it in its right of way fence for plaintiff's convenience, was not left open, plaintiff need not allege or prove that defendant knew or should have known that the gate had been left open. Scheffer v. Chicago, M. & P. S. R. Co., 53 M 302, 305, 163 P 565.

Under this section, a railroad which fails to maintain sufficient cattle guards is not liable for the value of livestock killed or maimed on its right of way unless the complaint alleges and the proof shows that the killing or maining was done by its engine or cars, and the absence of such an allegation renders the complaint insufficient. Hunt v. White Sulphur Springs & Y. P. R. Co., 63 M 508, 513, 208 P 917.

Where injury to livestock was not occasioned by reason of the nonexistence of a fence enclosing defendant railway's tracks, but, as alleged in the complaint, was caused by its employees in driving them away from the tracks into an inclosure where there was no water, the complaint in so far as it relied upon failure to fence did not state a cause of action under this section. Fabert v. Northern Pacific Ry. Co., 77 M 446, 450, 251 P 546.

Collateral References

Railroads 103, 104, 405, 406, 411, 412. 74 C.J.S. Railroads §§ 176-182, 547, 558, 575.

44 Am. Jur. 367, Railroads, § 152 et seq.

Employment of independent contractor as affecting liability for injury under legal provisions requiring companies to construct and maintain cattle guards. 23 ALR 993.

Snow rendering cattle guard ineffective as affecting liability of company. 26 ALR 679.

Sufficiency as to type of cattle guards at public or private crossings. 75 ALR 936.

72-402. (6541) Liable for injury from negligence. Every railroad corporation or company operating any railroad, or branch thereof, within the limits of this state, which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, or mule, or any cow, heifer, bull, ox, steer, or calf, or any other domestic animal, by running any engine or engines, car or cars, over or against any such animal, shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

History: Ap. p. Sec. 1, p. 68, L. 1831; re-en. Sec. 713, 5th Div. Comp. Stat. 1887; amd. Sec. 951, Civ. C. 1895; re-en. Sec. 4309, Rev. C. 1907; re-en. Sec. 6541, R. C. M. 1921.

Evidence

In an action against a railroad under this section, testimony that section boss showed witness where the animal was struck, and stated that after it was struck he killed it to end its suffering was not admissible as res gestae. Poindexter & Orr Livestock Co. v. Oregon Short Line R. Co., 33 M 338, 340, 83 P 886. See Callahan v. Chicago, B. & Q. R. Co., 47 M 401, 413, 133 P 687, 47 LRA (NS) 587.

In an action against a railroad under this section, proof of an injury to an animal which would inevitably result in its death substantially supports an allegation of killing. Poindexter & Orr Livestock Co. v. Oregon Short Line R. Co., 33

M 338, 342, 83 P 886.

Where the presumption of negligence on the part of a railroad company in the killing of livestock by one of its trains, relied on by plaintiff, is confronted with testimony of its train operatives that there was not any negligence on their part, the result is a conflict of evidence resolvable by the jury, and a directed verdict in favor of defendant was properly refused. Johnson v. Chicago, M. & St. P. R. Co., 52 M 73, 74, 155 P 971.

Injury to Livestock at Fenced Station Ground

In the absence of willfulness or negligence in handling their trains, railroads are not liable for injuring or killing livestock which stray into their depot or station grounds; plaintiff who conceded that locomotive engineer was not negligent in handling the train which killed a horse for which damages were sought was not entitled to recover. Bowers v. Chicago, M. & St. P. R. Co., 61 M 200, 207, 201 P 825.

Instruction on This Section

An instruction, given in an action for the killing of livestock, to the effect that the law presumed such killing to have been the result of defendant's negligence, correctly stated the law, even though it appeared that while the animal was fatally injured by the locomotive and cars of the defendant, the actual killing was done by one of the defendant's employees to end its suffering. Poindexter & Orr Livestock Co. v. Oregon Short Line R. Co., 33 M 338, 342, 83 P 886.

Collateral References

Railroads 405, 443.

74 C.J.S. Railroads §§ 547, 655 et seq. 44 Am. Jur. 826 et seq., 886, Railroads, §§ 572 et seq., 628.

Contributory negligence as a defense to a cause of action based upon violation of statute imposing duty on railroad. 10 ALR 2d 853.

72-403. (6542) Designation of station where records are kept. It shall be the duty of any corporation, association, company, person, or persons owning, controlling, or operating any railroad, or branch thereof, in this state, to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book, and within

thirty days after the killing or injuring of any animal or animals, to cause to be entered therein the date when and the place where the same were killed or injured, as near as may be, together with a description thereof, including the age, color, and sex of the same and marks and brands upon the same as near as the same can be done, which said book shall be kept for the inspection of any person or persons claiming to be interested in the inspection thereof, and shall cause a notice of the station so designated to be filed with the county clerk of the county in which said station is situated; provided, that when such railroad or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the affidavit hereinafter provided for may be served on the agent of such station.

History: Ap. p. Sec. 3, p. 70, L. 1881; amd. Sec. 720, 5th Div. Comp. Stat. 1887; amd. Sec. 953, Civ. C. 1895; amd. Sec. 2, Ch. 29, L. 1905; re-en. Sec. 4311, Rev. C. 1907; re-en. Sec. 6542, R. C. M. 1921.

County Seat

Where railroad keeps book required by this section in county seat town through which its line passes, it is under no obligation to cause a notice to be filed with the county clerk designating the station at which it is kept, and its omission to do so does not render it liable in damages under section 72-404. Hunt v. White Sulphur Springs & Y. P. R. Co., 63 M 508, 516 et seq., 208 P 917.

Police Regulation

This statute is a general police regulation, analogous to one requiring fencing and eattle guards, and as such valid. Dewell v. Northern Pacific Ry. Co., 54 M 350, 356, 170 P 753.

72-404. (6543) Penalty for violation of preceding section. Any corporation, association, person, or persons so owning, controlling, or operating such railroad or branch thereof, failing to designate said station, file said notice, keep said book, and make the entries as provided in the preceding section, shall be liable to the owner or owners of the animal or animals so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof, may, in its or their discretion, render verdict and judgment for the amount of the value of any such animal or animals so killed, or the amount of damages sustained by reason of any injury thereto.

History: En. Sec. 721, 5th Div. Comp. Stat. 1887; re-en. Sec. 954, Civ. C. 1895; re-en. Sec. 4312, Rev. C. 1907; re-en. Sec. 6543, R. C. M. 1921.

Constitutionality

This section is not unconstitutional as delegating law-making powers to the court or jury. Dewell v. Northern Pacific Ry. Co., 54 M 350, 358, 170 P 753.

Failure To Keep Record Book

The fact that the owner of cattle killed has actual knowledge of the killing does not prevent him from invoking the provision of this section imposing absolute liability for failure to keep the record book prescribed by section 72-403. Dewell v. Northern Pacific Ry. Co., 54 M 350, 358, 170 P 753.

Where a railway fails to keep the book prescribed by section 72-403, the district court may, in an action to recover damages, decline to hear its defense and award judgment for plaintiff, the statute not being open to constitutional attack. Foster v. Oregon Short Line R. Co., 62 M 230, 231, 204 P 375.

Pleading and Proof

Under this section it is not necessary for the plaintiff to allege or prove negligence on the part of the railroad. Dewell v. Northern Pacific Ry. Co., 54 M 350, 358, 170 P 753.

Collateral References

Railroads \$434. 74 C.J.S. Railroads \$630.

72-405. (6544) Attorney's fee allowed, except when. Whenever any of the livestock referred to in this chapter shall be injured or killed as therein recited, and the owner or owners thereof shall thereafter institute an action for the recovery of the loss or damage so sustained by him, or them, the court in which such action shall be brought shall tax, as a part of the costs therein, a reasonable sum, to be fixed by the court, as a fee to the attorney of the prevailing or successful party for conducting such action, which said fee so fixed and allowed shall be collected in like manner as other costs; provided, that no such fee shall be allowed by the court or collected from the defendant when it shall appear from the pleadings or proof, in any such action, that the defendant prior to the institution of such action, offered or agreed to pay to the plaintiff therein, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in said action. Or unless the plaintiff, at least forty days prior to the commencement of the action, shall have made demand, in writing, upon the defendant, his agent, or attorney, for the sum of money claimed as indemnity for the killing of said livestock.

History: Ap. p. Sec. 722, 5th Div. Comp. Stat. 1887; amd. Sec. 955, Civ. C. 1895; amd. Sec. 1, Ch. 101, L. 1903; re-en. Sec. 4313, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1919; amd. Sec. 1, Ch. 226, L. 1921; re-en. Sec. 6544, R. C. M. 1921.

Constitutionality

The provision of this section, prior to 1919 amendment, allowing an owner, in an action brought by him to recover damages for cattle alleged to have been killed by railroad company, to recover also an attorney's fee if he is successful but denying such fee to the railroad company if it is successful, was unconstitutional as deny-

ing equal protection of the laws. Dewell v. Northern Pacific Ry. Co., 54 M 350, 353, 170 P 753.

Value of Services

In action under this section, testimony as to the value of the attorney's services is not admissible, the question of its allowance being one for the determination of the court and not the jury. Vaill v. Northern Pacific Ry. Co., 66 M 301, 302, 306, 213 P 446.

Collateral References
Railroads \$\infty 452.
74 C.J.S. Railroads \$ 688.

72-406. (6545) Company may deposit value of animal. If any corporation, association, company, person, or persons, so owning, controlling, or operating any such railroad or branch thereof, shall kill or injure any animal or animals as aforesaid, and shall tender to the owner or owners thereof, or to his or their agent in that behalf, the amount which they shall deem to be the value thereof, or the damage thereto, as the case may be; or if said railroad, corporation, association, company, person, or persons shall deposit with the board of stock commissioners such amount for the owner or owners thereof; and such owner or owners, or his or their said agent, shall refuse to accept the same in settlement thereof, then such owner or owners shall pay all costs incurred in any action instituted, after such tender or deposit, to recover such value or damage, unless he or they shall recover therein more than the amount so tendered as aforesaid.

History: En. Sec. 723, 5th Div. Comp. re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; 6545, R. C. M. 1921.

72-407. (6546) Payment of claim for damages to state livestock commission. (1) Where livestock are killed by railroad corporations in viola-

tion of section 72-401 in the event the owner of any such livestock shall not claim or assert any claim against such railroad or railroad corporation for the value of the livestock so killed within six months from the date such animal or animals are killed, the secretary of the state livestock commission is hereby authorized, required, and directed to demand and receive from such railroad or railroad corporation payment in damages for such livestock, and the said livestock commission is hereby empowered and directed to institute and prosecute, in the name of the state, actions against such railroad or railroad companies in any court of competent jurisdiction to recover damages in the event of the failure, neglect, or refusal of such railroad or railroad companies to make payment of the amount of the claim filed by the secretary of the state livestock commission, upon demand as herein provided.

- (2) The money so recovered shall be paid over to the secretary of the state livestock commission, and shall be by him placed and held in a separate fund and disposed of as herein provided. Such money shall be held by the secretary of the state livestock commission for a period of two years after the date of its receipt, and in the event that the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed, within said time, the same shall be paid over to the state treasurer of the state of Montana, and be by him placed to the credit of the stock estray fund. However, should the owner of the animal killed present and prove his claim within the time herein provided, the secretary of the state livestock commission is hereby authorized and empowered to pay such claimant the amount of money to which he is entitled for the animal or animals so killed by any railroad or railroad company, the damages for which have been collected by the said state livestock commission or the secretary thereof, as provided in this act.
- (3) In all actions prosecuted for the recovery of the value of livestock killed under the provisions of this act, the prevailing or successful party shall recover all costs. In the event the owner of any animal or animals killed has not presented his claim against the railroad or railroad company which caused the same to be killed, any settlement made or obtained by the state livestock commission, or the secretary thereof, shall constitute a bar as against any action by the owner of such animal or animals.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R. C. M. 1921. Collateral References
Railroads 429, 434, 437, 450.

Railroads \$\sim 429, 434, 437, 450.
74 C.J.S. Railroads \\$\\$557, 630, 634, 686.

72-408. (6547) Penalty for driving animal or animals upon track. If the owner or owners, or his or their duly authorized agent or agents, of any animal or animals heretofore mentioned, shall drive the same upon the track of any such corporation, association, company, person, or persons, with the intention to injure it or them, and such animal or animals shall be killed or injured, such owner or owners shall be liable for all injury or damage occasioned by reason of such act, and shall be punished as provided in section 94-3569.

72-409 RAILROADS

History: En. Sec. 724, 5th Div. Comp. Stat. 1887; amd. Sec. 957, Civ. C. 1895; re-en. Sec. 4316, Rev. C. 1907; re-en. Sec. 6547, R. C. M. 1921.

Collateral References
Animals \$\sim 91.
3 C.J.S. Animals \sim 185-187.

72-409. (6548) Carcass and hide of animal. In all cases where any corporation, association, company, person, or persons shall kill, or shall injure any animal to such extent that it is necessary to kill the same, as provided in this chapter, they are hereby required and compelled to skin the same, and shall preserve the whole of said hide, or so much thereof as can be preserved, including the head and ears, and shall be entitled to the carcass and hide thereof, unless the owner or owners thereof shall claim the same, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But, in case such corporation, association, company, person, or persons so entitled thereto, shall take said carcass and hide, they shall skin such animal or animals, as herein provided, and shall deposit the hide thereof at the station designated on their line, such station to be designated by the secretary of the state livestock commission, during the space of sixty (60) days, for the inspection of persons claiming to be interested therein, and in the event no person shall claim any such animal, then before such corporation, association, company, person, or persons shall dispose of such hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect such hide for marks and brands, and receive from such stock inspector his authority, in writing, to dispose of such hide; and it shall be the duty of the stock inspector to notify any and all owners of such stock, if known or ascertainable from said inspection, of the death of such animal, and if the owner is unknown, the stock inspector shall notify the secretary of the stock commission of the death of such animal or animals; provided, however, that such corporation, association, company, person, or persons may dispose of the whole of said animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state, if the owner or owners shall not claim the same. Upon receiving such animal, the licensed rendering plant or licensed renderer shall skin said animal, and shall preserve the whole of said hide, or so much thereof as can be preserved, including the hide of head and ears, and such hide shall be stored separate and apart from hides received from other sources. Within five (5) days after receipt of such hide, such licensed rendering plant or licensed renderer shall notify the state livestock inspector of possession of such hide. Said state livestock inspector shall make an inspection thereof within ten (10) days after being so notified, and it shall be his duty to, and he shall immediately, notify the owner thereof, if ownership be ascertainable, of the death of such animal. If the owner is unknown, the stock inspector shall notify the secretary of the livestock commission of the death of such animal. If no person shall claim the hide of such animal within thirty (30) days after notice given to the state livestock inspector by such licensed renderer or licensed rendering plant, said state livestock inspector shall give written authorization to such licensed rendering plant or licensed renderer to dispose of such hide. Before making disposition thereof under such written authorization, such licensed rendering plant or licensed renderer shall obtain the consent of the corporation, association, company, person, or persons from which such animal was received.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1949.

Operation and Effect

In an action against a railroad company to recover for injuries to stock, the admissions of an agent of the company, acting within the scope of his authority and with knowledge of the circumstances, that he had ordered the animal killed and the beef sold for the benefit of the company, and the receipt of the proceeds of such sale by the company, establish a prima facie case of the admission of negligence by the company. McCauley v. Montana Central Ry. Co., 11 M 483, 484, 28 P 729.

Collateral References

Railroads \$\infty 405. 74 C.J.S. Railroads § 547.

72-410. (6549) Penalty for violation. Any person violating any of the provisions of sections 72-405, 72-407 or 72-409 shall, upon conviction thereof, be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment in the county jail for a period of not less than ten days nor more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 99, L. 1919; amd. Sec. 1, Ch. 49, L. 1921; re-en. Sec. 6549, R. C. M. 1921.

Cross-Reference

Penalty for violation when not otherwise provided, sec. 94-35-174.

Collateral References

Animals 101 et seq.; Railroads 255. 3 C.J.S. Animals § 210; 74 C.J.S. Railroads § 456.

72-411. (6550) Shipment of livestock—notice of injury. Any provision, stipulation, or condition in any shipping contract, bill of lading, or other agreement hereafter made or entered into by or between any common carrier and the owner or shipper of any shipment of livestock, providing that written or verbal notice of loss, injury, or damage thereto, or of claim therefor, shall be made or given to any common carrier, or to any agent or officer of any common carrier, or to any other person, within any period less than four months from the date of the occurrence of any such loss, injury, or damage, shall be void and of no effect.

History: En. Sec. 1, Ch. 138, L. 1909; re-en. Sec. 6550, R. C. M. 1921.

Collateral References Carriers@=218.

13 C.J.S. Carriers § 88 et seq. 14 Am. Jur. 2d 187 et seq., Carriers, § 687 et seq.

CHAPTER 5

REGULATIONS CONCERNING RIGHT OF WAY FENCES AND CATTLE GUARDS

Section 72-501. Right of way to be kept free from grass and combustible material.

72-502. Crossings through fences.

Width and cattle guard requirements. 72-503.

Openings under trestles. 72-504.

Law applicable to grazing country only. Violation of law a misdemeanor—penalty. 72-505. 72-506.

72-501. (6551) Right of way to be kept free from grass and combustible material. It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track, and either side thereof, for a distance of one hundred feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds, or any dangerous or combustible material; and any railroad company or corporation failing to keep its railroad track and each side thereof free as above specified, shall be liable for any damages which may occur from fire emanating from operating such railroad, and a neglect to comply with the provisions of this section in keeping free any railroad track, and either side for a distance equal to the space of ground covered by the grant of the right of way for the railroad corporation or company, shall be prima facie evidence of negligence on the part of any such railroad corporation or company. But no railroad corporation or company shall be required to keep free as above specified any land not a part of its right of way.

History: Ap. p. Sec. 7, p. 71, L. 1881; re-en. Sec. 719, 5th Div. Comp. Stat. 1887; amd. Sec. 952, Civ. C. 1895; re-en. Sec. 4310, Rev. C. 1907; re-en. Sec. 6551, R. C. M. 1921.

Definition of Railroad

The term "railroad" as employed in this section refers only to common carriers. Crowley v. Polleys Lumber Co., 92 M 27, 32, 9 P 2d 1068.

Does Not Offend Chartered Right

It is as much the duty of a railroad company to keep its right of way free from dead grass, weeds, or any dangerous or combustible material, as it is to use proper means to prevent the emission of sparks of fire; a statute requiring this to be done does not trench upon the chartered right, under act of Congress, of such a railroad company. Diamond v. Northern Pacific Ry. Co., 6 M 580, 588, 13 P 367. See Bielenberg v. Montana Union Ry. Co., 8 M 271, 278, 20 P 314, 2 LRA 813.

Logging Railroad

This section has no application to a logging railroad used solely in connection with the owner's logging business. Crowley v. Polleys Lumber Co., 92 M 27, 32, 9 P 2d 1068.

Necessary Showing for Recovery

Failure to comply with this section, does not render railroad liable for damage occurring from any fire emanating from operating the railroad unless combustible matter operated as an agency in communicating the fire to plaintiff's property. Spencer v. Montana Central Ry. Co., 11 M 164, 27 P 681.

In an action for the destruction of property by fire communicated to it through combustible material permitted by a railway to accumulate on its right

of way, a prima facie case of negligence is established by showing that defendant permitted the accumulation of such material on its right of way; but to enable plaintiff to recover, he must show also that the property was destroyed by fire emanating from the operation of the railroad, and that the combustible material was an agency through which the fire was communicated to the property destroyed. Pure Oil Co. v. Chicago, M. & St. P. R. Co., 56 M 266, 185 P 150.

Purpose of Damages

The damages awarded to individuals for the failure of a railroad company to comply with this section are compensatory only, and hence are not a "penalty otherwise provided for" within the meaning of section 94-35-252. Cooper v. Northern Pacific Ry. Co., 212 Fed 533, 535.

Rebuttal of Presumption

A prima facie case of negligence established by plaintiff may be overcome by evidence that the railway company exercised reasonable care to keep its right of way free from combustible material. Pure Oil Co. v. Chicago, M. & St. P. R. Co., 56 M 266, 185 P 150.

Who May Complain

This section is for the benefit of all going on the right of way for the purposes of, or incidental to, transportation, and of all off the right of way who may be injured by the railroad's failure to perform the duty imposed, but does not extend to trespassers or tenants on the right of way who take the same as they find it, or subject to the terms of their occupancy. Cooper v. Northern Pacific Ry. Co., 212 Fed 533, 536.

Lease construed as exempting railway from liability for loss occasioned by fire incident to or arising from railway operation, but not exempting it for loss arising from fire due to the railway's violation of this section. Cooper v. Northern Pacific Ry. Co., 212 Fed 533, 536.

Collateral References
Railroads \$\infty 456.
74 C.J.S. Railroads \ 494.

72-502. (6552) Crossings through fences. Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state, which may hereafter fence its right of way, shall make crossings through its fence and over its roadbed along its right of way, every four miles thereof, or as near thereat as may be practicable.

History: En. Sec. 1, p. 148, L. 1893; re-en. Sec. 959, Civ. C. 1895; re-en. Sec. 4318, Rev. C. 1907; re-en. Sec. 6552, R. C. M. 1921.

Collateral References
Railroads \$\sim 102, 413.
74 C.J.S. Railroads \sim 170 et seq., 583.
44 Am. Jur. 378, Railroads, \sim 164.

72-503. (6553) Width and cattle guard requirements. Such openings shall not be less than sixty feet in width. The said railroad company or lessee, person, company, or corporation operating any railroad shall place cattle guards on either side of the said openings, sufficient to prevent any cattle from entering upon the said right of way inclosed.

History: En. Sec. 2, p. 148, L. 1893; 4319, Rev. C. 1907; re-en. Sec. 6553, R. re-en. Sec. 960, Civ. C. 1895; re-en. Sec. C. M. 1921.

72-504. (6554) Openings under trestles. The said railroad company, lessee, person, or company operating any railroad in addition to the said openings, shall leave unfenced any places where the said railroad runs over trestles that are sufficiently high for cattle to go underneath the same.

History: En. Sec. 3, p. 148, L. 1893; re-en. Sec. 961, Civ. C. 1895; re-en. Sec. 4320, Rev. C. 1907; re-en. Sec. 6554, R. C. M. 1921.

Collateral References
Railroads ≈ 86, 102, 103, 108.
74 C.J.S. Railroads §§ 128, 168, 185 et

72-505. (6555) Law applicable to grazing country only. The provisions of this act shall only apply to grazing country.

History: En. Sec. 4, p. 148, L. 1893; 4321, Rev. C. 1907; re-en. Sec. 6555, R. re-en. Sec. 962, Civ. C. 1895; re-en. Sec. C. M. 1921.

72-506. (6556) Violation of law a misdemeanor—penalty. Any rail-road corporation or lessee, person, company, or corporation operating any railroad in this state, violating the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than one hundred dollars, and not more than five hundred dollars.

History: En. Sec. 5, p. 148, L. 1893; re-en. Sec. 963, Civ. C. 1895; re-en. Sec. 4322, Rev. C. 1907; re-en. Sec. 6556, R. C. M. 1921.

Cross-References

Liability for stock killed or injured for lack of cattle guard, sec. 72-401.

Penalty for violations when not otherwise provided, sec. 94-35-174.

Collateral References

Railroads \$\infty\$3, 86, 102(12), 104(2). 74 C.J.S. Railroads \$\{\}\$ 121, 128, 168. 44 Am. Jur. 387, Railroads, \{\}\$ 174.

RAILROADS

CHAPTER 6

GENERAL REGULATION OF BUSINESS OF RAILROADS

Section 72-601. Baggage checks. 72-602. Duties of corporation. Corporation to pay damage for refusal. Accommodations for and care to be taken of passengers. 72-603. 72-604. 72-605. Printed regulations to be posted. 72-606. Expulsion of passengers refusing to pay fare. Officers to wear badges.
Passenger tickets—how issued. 72-607. 72-608. Ticket agent to be given certificate. Unlawful sale of tickets. 72-609. 72-610. 72-611. Violation of law a misdemeanor—penalty. Certificate to be exhibited. 72-612. 72-613. Redemption of unused tickets. 72-614. Penalty for failure to redeem ticket. 72-615. Discrimination in charges forbidden. Reduced or free transportation by carriers. 72-616. 72-617. Persons to whom free transportation may be issued. 72-618. Additional free transportation authorized. Penalty for violation of law.
Persons or property may be transported free or at reduced rates in 72-619. 72-620. certain cases. 72-621. Classification shall be held reasonable, etc. 72-622. Size and equipment of caboose. 72-623. Violation of law a misdemeanor—penalty. 72-624. Telephones must be maintained in offices of railroad, telegraph and express companies. "Business hours" defined. Violation of law a misdemeanor. 72-625. 72-626. 72-627. Duty to furnish shipping facilities. 72-628. Penalty. Bulletin boards must be installed in stations. 72-629. 72-630. Penalty for violation of preceding section. 72-631. Passenger rate of three cents per mile. 72-632. To what lines applicable. Penalty for violation of law. Party injured to share fine. 72-633. 72-634. 72-635. Tunnel charges prohibited. 72-636. Violation of law a misdemeanor—penalty. Confiscation of fuel by carrier prohibited. Liability of carrier for violation of preceding section. 72-637. 72-638. Violation of law a misdemeanor-penalty. 72-639. 72-640. Obstruction of highway crossings by railroads. 72-641. Trains to come to full stop at grade crossings. 72-642. Fireguards. 72-643. County commissioners may plow guard and recover expense. 72-644. Duty to construct drain and ditches. Medical aid to injured trainmen. Compensation of physician or surgeon. 72-645. 72-646. 72-647. Refusal to pay compensation a misdemeanor. Liability for death or personal injury. 72-648. 72-649. Contributory negligence—diminution of damages. Assumption of risk. 72-650. 72-651. Exemption from liability by contract, etc. 72-652. Headlights for locomotives. Penalty for not using. Issuance of bills of lading by railroad station agents. 72-653. 72-654. Violation of preceding section a misdemeanor—penalty. 72-655. Suitable cars must be furnished for grain or bulk shipments. Duty of railroad, after notice, to place cars in proper condition. Right of shipper upon default of railroad company. 72-656. 72-657. 72-658. 72-659. Repairs may be made by shipper without notice, when. Demurrage not to accrue during repairs. Railroad company liable for cost of repairs, cleansing or cooperage. 72-660.

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Locomotive and electric motors to be equipped with numbers.

Duty of railroad commission to enforce law.

Hearing of complaint by railroad commission.

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72-663.

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72-666. Compensation of railroad employees on removal of division point.

72-667. Proviso-railroad may post statement.

72-668. Track motor cars—windshield—wipers—canopy on top.

Head and rear lights on track motor cars.

72-670. Violation-misdemeanor.

(6557) Baggage checks. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

History: En. Sec. 970, Civ. C. 1895; reen. Sec. 4323, Rev. C. 1907; re-en. Sec. 6557, R. C. M. 1921. Cal. Civ. C. Sec. 479.

In the absence of a special contract limiting the carrier's liability, the provi-sions of this section would authorize the recovery of the actual value of the baggage lost. Rose v. Northern Pacific Ry. Co., 35 M 70, 78, 88 P 767, 119 Am. St. Rep. 836.

Collateral References

Carriers 21, 461/2, 91. 13 C.J.S. Carriers §§ 121, 160, 181, 182.

Carrier's liability in respect to baggage checked in parcel room. 7 ALR 1234; 27 ALR 157 and 37 ALR 762.

Liability of carrier for baggage not ac-

companied by passenger. 23 ALR 1446. Liability of carrier for baggage when not accompanied by passenger, where passenger is using a commutation or mileage ticket. 23 ALR 1456.

Tort liability of carrier for theft by servant. 15 ALR 2d 842.

Proximate cause or affecting railroad carrier's liability for loss of baggage or effects accompanying passenger. 32 ALR

Liability of carrier for loss of passenger's baggage or packages. 68 ALR 2d 1350.

72-602. (6558) Duties of corporation. Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as it shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation, at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

History: En. Sec. 971, Civ. C. 1895; re-en. Sec. 4324, Rev. C. 1907; re-en. Sec. 6558, R. C. M. 1921. Cal. Civ. C. Sec. 481.

Cross-References

Dynamiting or injuring trains, secs. 94-3205 to 94-3207.

Holding up trains, penalty, sec. 94-3205. Interference with locomotives, secs. 94-3205 to 94-3208.

Stealing rides on trains, penalty, sec. 94-35-201.

Collateral References

Carriers 39, 40, 206, 236; Railroads 214, 218.

13 C.J.S. Carriers §§ 27 et seq., 538 et seq.; 74 C.J.S. Railroads §§ 390, 416 et

Jur. 2d 305 et seq., Carriers, § 859 et seq.; 13 Am. Jur. 2d 675 et seq., 749 et seq., 44 Am. Jur. 588, Railroads, § 371. Carriers, §§ 142 et seq., 235 et seq.; 14 Am.

(6559) Corporation to pay damage for refusal. In case of refusal by such corporation or its agents so to take and transport any passengers or property, or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

History: En. Sec. 972, Civ. C. 1895; re-en. Sec. 4325, Rev. C. 1907; re-en. Sec. 6559, R. C. M. 1921. Cal. Civ. C. Sec. 482.

Cross-Reference

Refusal to receive passenger, penalty, sec. 94-35-104.

Operation and Effect

This section merely declares just what the rule of law applicable in an ordinary negligence action would be in the absence

of the statute. Burles v. Oregon Short Line R. Co., 49 M 129, 131, 140 P 513, AnnCas 1916A 873.

Collateral References

Carriers \$\infty 45, 91, 220, 236(2).

13 C.J.S. Carriers §§ 33, 38, 540; 74 C.J.S. Railroads §§ 447, 453. 13 Am. Jur. 2d 761, Carriers, § 253; 14

Am. Jur. 2d 307, 308, Carriers, §§ 862, 863.

72-604. (6560) Accommodations for and care to be taken of passengers. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

History: En. Sec. 973, Civ. C. 1895; re-en. Sec. 4326, Rev. C. 1907; re-en. Sec. 6560, R. C. M. 1921. Cal. Civ. C. Sec. 483.

Cross-Reference

Conductor, power to arrest for disturbance, sec. 94-3564.

Collateral References

Railroads 218, 226.

74 C.J.S. Railroads § 422. 14 Am. Jur. 2d 312, Carriers, § 871 et

Liability of carrier for injury to passenger by articles belonging to carrier on the floor or in the aisles. 12 ALR 1366.

Liability of carrier for injury to passenger due to obstruction of aisle by property of another passenger. 19 ALR 1372.

Personal liability of servant or agent of carrier for injury to passenger. 20 ALR 97 and 99 ALR 408.

Injury to passenger by door of car. 25 ALR 1061 and 41 ALR 1089.

Injuries to passenger by car window. 29 ALR 1262 and 45 ALR 1541.

Carrier's liability for injury to passen-

ger due to rushing or crowding of passenger. 32 ALR 1315 and 155 ALR 634.

Liability of carrier for injury from falling articles of freight. 40 ALR 501.
Liability for personal injury to person

in Pullman car. 41 ALR 1397.

Liability of carrier for injuries to or death of passenger from accident due to physical condition of employee. 120 ALR 931.

Animal, liability of carrier for injury to passenger by. 17 ALR 2d 465.

Liability for injury to patron from defect or fall in seat. 21 ALR 2d 464.

Steps or vestibule: duty of railroad to passenger to keep steps or vestibule of car free from debris or foreign substances other than snow or ice. 34 ALR 2d 360.

Racial segregation by common carriers. 38 ALR 2d 1190.

Washroom or lavatory: carrier's liability to passenger injured while using washroom or lavatory facilities on conveyance. 50 ALR 2d 1071.

Liability of carrier to passenger injured through fall of baggage or other object from overhead repository. 68 ALR 2d 667.

(6561) Printed regulations to be posted. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

History: En. Sec. 974, Civ. C. 1895; re-en. Sec. 4327, Rev. C. 1907; re-en. Sec. 6561, R. C. M. 1921. Cal. Civ. C. Sec. 484.

Collateral References

Carriers 248, 267, 335; Railroads 223 et seq.

13 C.J.S. Carriers §§ 561, 573, 779; 74 C.J.S. Railroads § 419. 14 Am. Jur. 2d 302, 303, Carriers, §§ 856,

(6562) Expulsion of passengers refusing to pay fare. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

History: En. Sec. 975, Civ. C. 1895; re-en. Sec. 4328, Rev. C. 1907; re-en. Sec. 6562, R. C. M. 1921. Cal. Civ. C. Sec. 487.

Cross-Reference

Use of force in expelling passengers not unlawful, sec. 94-605.

Collateral References

Carriers 355, 363, 365. 13 C.J.S. Carriers §§ 810, 821, 824. 14 Am. Jur. 2d 512-514, 522, Carriers, §§ 1094, 1095, 1104.

Sleeping-car company's liability for ejection of passenger by employee, 60 ALR 2d 1115.

(6563) Officers to wear badges. Every conductor, baggage master, engineer, brakeman, or other employee of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employee, without such badge, has any authority to meddle or interfere with any passenger or property.

History: En. Sec. 976, Civ. C. 1895; re-en. Sec. 4329, Rev. C. 1907; re-en. Sec. 6563, R. C. M. 1921. Cal. Civ. C. Sec. 488.

Cross-References

Conductor, violation of duty, sec. 94-35-251.

Hours of labor, sec. 41-1123.

Intoxication of employees, penalty, sec. 94-35-109.

Collateral References

Carriers 251; Railroads 230. 13 C.J.S. Carriers § 602; 74 C.J.S. Railroads § 400.

(6564) Passenger tickets—how issued. Every railroad corporation must provide, and on being tendered the regular rates of fare, furnish to every person desiring a passage on its passenger cars, a ticket, which entitles the purchaser to a ride, and to the accommodations provided on

their cars, from the depot or station where the same is purchased to any other depot or station on the line of its road. Every such ticket entitles the holder thereof to ride on its passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

History: En. Sec. 977, Civ. C. 1895; re-en. Sec. 4330, Rev. C. 1907; re-en. Sec. 6564, R. C. M. 1921. Cal. Civ. C. Sec. 490.

Cross-References

Counterfeiting railroad tickets, penalty, sec. 94-2012.

Larceny of passenger ticket, determination of value, sec. 94-2711.

Refusal to receive passenger, penalty, sec. 94-35-104.

Reduction of Fare

In the absence of statutory prohibition, a railway company may sell, for a reduced fare, a particular form of ticket, whereby its liability is restricted and its obligations curtailed. Miley v. Northern Pacific Ry. Co., 41 M 51, 55, 108 P 5.

One who purchased a railroad ticket at a reduced rate to a certain station on defendant's line, and boarded a train which did not stop at the point to which his ticket called for transportation, having failed to pay the regular fare, was not one of the class of persons for whose benefit this section was enacted, and therefore could not maintain an action for the penalty therein provided. Miley v. Northern Pacific Ry. Co., 41 M 51, 55, 108 P 5.

Collateral References

Carriers ≈ 20(2), 252, 253, 271. 13 C.J.S. Carriers §§ 569, 597, 658. 14 Am. Jur. 2d 265 et seq., Carriers, § 799 et seq.

72-609. (6565) Ticket agent to be given certificate. It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers, to provide each agent who may be authorized to sell within the state tickets or other evidence entitling the holder thereof to travel upon his or their railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat, and shall, for the information of travelers, be kept posted in [a] conspicuous place in the office of such agent.

History: En. Sec. 1, p. 150, L. 1893; re-en. Sec. 978, Civ. C. 1895; re-en. Sec. 4331, Rev. C. 1907; re-en. Sec. 6565, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1943; amd. Sec. 1, Ch. 60, L. 1949.

Compiler's Note

The bracketed word "a" was inserted by the compiler.

Constitutionality

This section is constitutional; it is in the nature of a police regulation, and not for revenue purposes. State v. Bernheim, 19 M 512, 515, 49 P 441.

Collateral References

Carriers \$252. 13 C.J.S. Carriers §§ 598, 600.

72-610. (6566) Unlawful sale of tickets. It shall be unlawful for any person not a duly authorized ticket agent, and in possession of such certificate, so posted as aforesaid, to sell, barter, or transfer within this state, for any consideration, the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated, or owned within or without the limits of this state.

History: En. Sec. 2, p. 150, L. 1893; 4332, Rev. C. 1907; re-en. Sec. 6566, R. re-en. Sec. 979, Civ. C. 1895; re-en. Sec. C. M. 1921; amd. Sec. 2, Ch. 60, L. 1949.

72-611. (6567) Violation of law a misdemeanor—penalty. Whoever shall violate the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, and by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted.

History: En. Sec. 3, p. 151, L. 1893; 4333, Rev. C. 1907; re-en. Sec. 6567, R. C. re-en. Sec. 980, Civ. C. 1895; re-en. Sec. M. 1921.

72-612. (6568) Certificate to be exhibited. It shall be the duty of every agent residing or acting within this state, who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him so to do, such certificate of his authority thus to sell.

History: En. Sec. 4, p. 151, L. 1893; 4334, Rev. C. 1907; re-en. Sec. 6568, R. C. re-en. Sec. 981, Civ. C. 1895; re-en. Sec. M. 1921; amd. Sec. 3, Ch. 60, L. 1949.

72-613. (6569) Redemption of unused tickets. It shall be the duty of the owners of every railroad or steamboat situate or operated, in whole or in part, within this state, to provide for the redemption, under reasonable precautions, of the whole, or of any coupon or coupons of any ticket theretofore sold by any agent authorized as aforesaid, which the purchaser, for any reason other than the expiration of the time limited in said ticket for the use thereof, has not used, at cost, in case of the ticket not used, and in case of a coupon of a ticket partially used, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used; provided, that such ticket, or coupon, or coupons, shall be presented for such redemption to any agent authorized as aforesaid before the time therein limited for the use thereof shall have expired; and the deposit of such ticket, or part of ticket in the post office, addressed to any such agent, with postage thereon duly prepaid, before the expiration of the time limited on such ticket or part of ticket, shall be deemed such presentation; and the sale by any person of such ticket, or of the unused portion of any such ticket or coupon, or coupons, otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation of the provisions of this act, and any person guilty of such violation shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted; provided, however, that when any ticket selling agent so licensed as aforesaid, or any common carrier subject to the provisions of this act, shall sell, barter, or transfer to any person any mileage book or commutation tickets or excursion ticket at any reduced rate authorized by law, and when such mileage book, commutation ticket, or excursion ticket shall, by the terms thereof, be limited in respect of the time in which the same shall be used, then, and in that case, such mileage book, commutation ticket, or excursion ticket shall not be redeemed by said common carrier subject to the provisions of this act.

History: En. Sec. 5, p. 152, L. 1893; re-en. Sec. 982, Civ. C. 1895; re-en. Sec. 4335, Rev. C. 1907; re-en. Sec. 6569, R. C. M. 1921.

Collateral References
Carriers \$\infty 261.
13 C.J.S. Carriers \\$ 614.
14 Am. Jur. 2d 263-265, Carriers, \\$\\$ 797,

72-614. (6570) Penalty for failure to redeem ticket. Any railroad company or steamboat company which shall, by any of its authorized ticket-selling agents within this state, unreasonably refuse to redeem any coupon of a ticket, or any ticket as required by the preceding section, shall pay to the state of Montana a fine not exceeding five hundred dollars for each offense.

History: En. Sec. 6, p. 152, L. 1893; 4336, Rev. C. 1907; re-en. Sec. 6570, R. C. re-en. Sec. 983, Civ. C. 1895; re-en. Sec. M. 1921.

72-615. (6571) Discrimination in charges forbidden. It is hereby declared to be unlawful for any ticket-selling agent so authorized and licensed as aforesaid, or for any common carrier subject to the provisions of this act, to charge, demand, collect, or receive from, to sell, barter, transfer, or assign to, any person or persons, firm, company, corporation, or association, any ticket or tickets of any class whatever entitling the purchaser or holder thereof to transportation by the common carrier issuing such ticket or tickets, for a greater or less sum or price than is charged, demanded, collected, or received by such ticket-selling agent or common carrier subject to the provisions of this act, for a similar ticket or tickets of the same class. Any person, ticket-selling agent, or common carrier subject to the provisions of this act, who shall violate the provisions of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum not exceeding one thousand dollars for each offense.

History: En. Sec. 7, p. 153, L. 1893; re-en. Sec. 984, Civ. C. 1895; re-en. Sec. 4337, Rev. C. 1907; re-en. Sec. 6571, R. C. M. 1921.

NOTE.—This section held impliedly repealed by section 72-127 (3805) allowing railroads to charge a less amount than the regular passenger tariff rate in certain cases. Opinions of Attorney General, Vol. 3, p. 101.

Construction

As a statute may be remedial in part and penal in part for purposes of construction, the penalty clause of this section should be construed according to the fair import of its terms, with a view to effectuating its object, as required by section 94-101, but the part prohibiting unjust discrimination in charging for transportation should be liberally construed with a view

to carrying out the legislative intention. John v. Northern Pacific Ry. Co., 42 M 18, 43, 111 P 632, 32 LRA (NS) 85.

Purpose

The purpose of this section was not only to benefit the railroad companies by driving the ticket brokers out of business, but to provide against loss to the purchaser of an unused ticket by requiring that it should be redeemed by the seller; and so it was enacted that the railroad companies should themselves be prohibited from indulging in kindred practices, by pernicious discrimination between persons of the same class. John v. Northern Pacific Ry. Co., 42 M 18, 38, 111 P 632, 32 LRA (NS) 85.

Collateral References

14 Am. Jur. 2d 268-270, Carriers, §§ 806-809.

72-616. (6572) Reduced or free transportation by carriers. No common carrier of passengers shall directly or indirectly issue, furnish, or give any free ticket, free pass, or free transportation for the carriage or passage of any person within this state, except as permitted in the next section. Nor

shall any common carrier, in the sale of tickets for transportation at reduced rates, discriminate between persons purchasing the same, except the persons described in the next section. The words "free ticket," "free pass," "free transportation," as used in this act, shall include any ticket, pass, contract, permit, or transportation issued, furnished, or given to any person by any common carrier of passengers for carriage or passage, for any other consideration than money paid in the usual way at the rate, fare, or charge open to all who desire to purchase.

History: En. Sec. 1, Ch. 136, L. 1911; re-en. Sec. 6572, R. C. M. 1921.

Cross-Reference Rates for military men, sec. 77-404. Collateral References
Carriers 249, 257.
13 C.J.S. Carriers §§ 581, 586.
13 Am. Jur. 2d 723, Carriers, § 204; 14
Am. Jur. 2d 293, Carriers, § 847.

72-617. (6573) Persons to whom free transportation may be issued. The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following, to wit: (a) The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers; (b) to the families of the persons included in subdivision "a" hereof; (c) the general officers of any such common carriers; (d) employees of sleeping car and express car companies, and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys on trains, baggage agents; (e) persons injured in wrecks, and physicians and nurses attending such persons: (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation; (g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations; (h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes; (j) superannuated and pensioned employees, and members of their families and widows of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (1) policemen and firemen of any city, wearing the insignia of their office within the limits of such city; (m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; (n) indigent, destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents, employees in such transportation; (o) school children to and from public or parochial schools; (p) the railroad commission of Montana; (q) the state fire marshal: (r) the state scale expert, and their necessary employees, while traveling on official duty.

The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city, where a condition of a franchise grant requires the furnishing of transportation to policemen, firemen, and officers while in the performance of official duties. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that this act shall not be construed to modify or repeal the provisions of section 72-618.

History: En. Sec. 2, Ch. 136, L. 1911; re-en. Sec. 6573, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1929; amd. Sec. 1, Ch. 78, L. 1933.

Cross-Reference

Railroad commissioners, right to free transportation, sec. 72-107.

Collateral References

Carriers \$\sim 253\forall2.
13 C.J.S. Carriers \\$ 622 et seq.
14 Am. Jur. 2d 290 et seq., Carriers,
\\$ 843 et seq.

Status of employee or his family traveling on employer's interstate conveyance by means of pass issued pursuant to specific provision of employment or collective bargaining agreement. 55 ALR 2d 766.

(6573.1) Additional free transportation authorized. That common carriers of passengers in this state authorized by section 72-617, to issue free transportation to certain classes of persons may also issue free transportation to their furloughed employees and members of their families, to persons who have become disabled or infirm in the service of a common carrier, to members of families of persons who have become disabled or infirm in the service of any such common carrier, to families of persons killed, and widows during widowhood and minor children during minority, of persons who died while in the service of any such common carrier, to witnesses attending any legal investigation in which such carrier is interested, for the remains of persons who died while in the employment of a common carrier, and to ex-employees traveling for the purpose of entering the service of any such common carrier; provided that the provisions hereof shall not be construed to prohibit or make unlawful the interchange of passes for the persons to whom free transportation may be furnished under this section.

History: En. Sec. 1, Ch. 9, L. 1929.

72-619. (6574) Penalty for violation of law. Any common carrier, its officers or agents or representatives, violating any of the provisions of this act, shall be fined in the sum of not less than ten dollars nor more than three hundred dollars for each offense, and any person, other than the persons excepted in the preceding section, who accepts or uses any free ticket, free pass, or free transportation for carriage or passage within this state, shall be subject to a like penalty.

History: En. Sec. 3, Ch. 136, L. 1911; re-en. Sec. 6574, R. C. M. 1921.

72-620. (6575) Persons or property may be transported free or at reduced rates in certain cases. No provisions of the laws of the state of Montana shall be construed to prevent, or shall prevent any person, association,

company, or corporation engaged as a common carrier of persons or property in the state of Montana, from carrying, storing, or handling property free, or at reduced rates, for the United States, state, or municipal governments, or for charitable institutions, or property which is being transported to or from fairs and expositions for exhibit thereat, or cars used by the government of the United States or state of Montana for the transportation of fish, for carrying free or at reduced rates agents and employees employed in such transportation, and nothing therein contained shall prevent such person, association, company, or corporation from issuing free transportation, or selling tickets at reduced rates, to the following classes of persons:

Employees of the issuing road, and the members of their families.

Officers and employees of other railroads, and the members of their families upon the exchange of passes or tickets.

Doctors, nurses, and helpers being carried to wrecks.

Soldiers or sailors going to or coming from institutions for their keeping. Ministers of religion and persons engaged in charitable or religious work, and destitute or homeless persons being transported by charitable societies, or at public expense.

Executive, judicial, or legislative officers of the state of Montana, including the state game warden and his deputies, the members of the state board of horticulture, members of the faculty of the different educational institutions of the state, officers, trustees, or employees of the state fair, officers and inspectors of the livestock and sheep commission boards; provided, however, that when free transportation, or a ticket at a reduced rate, shall be issued to any such officer, state game warden, or deputy, or any member of the said board of horticulture, or any president or member of the faculty of any educational institution, that the same shall only be issued upon the application of the secretary of state, and the said transportation, or ticket, shall be delivered to the secretary of state for delivery to the person or persons applying therefor, and the secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him; provided further, that such state officer, state game warden, and deputies, and members of the state board of horticulture, and the president and faculty of the state educational institutions when traveling upon any free transportation, shall not be entitled to charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they shall not be entitled to charge mileage in excess of the cost of said ticket.

History: En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R. C. M. 1921.

72-621. (6576) Classification shall be held reasonable, etc. The carrying free, or at reduced rates, of property or persons in any of the classes above specified, shall be held to be a reasonable classification by railroad companies for such purposes, and not to be unjust discrimination, and the carriage and transportation by any railroad company, at free or reduced rates, in any of the cases above specified, shall be held not to be a viola-

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tion of any of the provisions of the laws of Montana, or subject said rail-road company to any penalty therefor.

History: En. Sec. 2, Ch. 53, L. 1913; re-en. Sec. 6576, R. C. M. 1921.

72-622. (6577) Size and equipment of caboose. It shall be unlawful for any person, corporation, or company operating any railroad or railway in this state, to require or permit the use of any caboose cars, unless said caboose cars shall be at least twenty-four feet in length, exclusive of platforms, and shall be provided with a door in each end thereof, and with suitable water closets, cupolas, platforms, guard rails, grabirons, and steps for the safety of persons in alighting or getting on said caboose cars, and said caboose cars shall be equipped with at least two four-wheel trucks.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R. C. M. 1921. Collateral References
Railroads \$229.
74 C.J.S. Railroads \$424.

72-623. (6578) Violation of law a misdemeanor—penalty. Any person, corporation, or company operating any railroad or railway in this state, violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars, nor more than one thousand dollars for each offense.

History: En. Sec. 2, Ch. 54, L. 1907; Sec. 4339, Rev. C. 1907; re-en. Sec. 6578, R. C. M. 1921.

72-624. (6579) Telephones must be maintained in offices of railroad, telegraph and express companies. It is hereby made the duty of every railroad, telegraph, and express company, doing business in the state of Montana, to install or allow to be installed in its ticket office, public office, and freight office, in all cities and towns in this state, where there are, at the time, one or more public telephone exchanges, a telephone of each public telephone exchange in said city or town, and to maintain in each of said offices direct telephone connection with each of such exchanges; but nothing herein contained shall be construed to require said railroads, telegraph, or express company to build a telephone line, it being intended to require such company or companies to install, or allow to be installed, a telephone in each of its offices where it can be obtained by them as they may be obtained for other business offices in the same vicinity; each railroad, telegraph, and express company shall cause to be promptly answered all calls made over such telephone connection during business hours; provided, however, that such railroad, telegraph, and express companies shall not, in the absence of an agreement to the effect, be required to bear the expense incident to the installation of said telephones, or to any charges for the use thereof. Over such telephone connection, such railroad, telegraph, or express company shall cause prompt and correct replies to be made to all reasonable and proper inquiries over such connection during business hours, concerning the passenger, freight, or telegraph service of such railroad, telegraph, or express company.

History: En. Sec. 1, Ch. 182, L. 1907; Sec. 4340, Rev. C. 1907; re-en. Sec. 6579, R. C. M. 1921. Collateral References
Railroads \$\infty 225, 226.
74 C.J.S. Railroads \\$ 408.

72-625. (6580) "Business hours" defined. The term "business hours," as used in this act, shall be construed to mean such times as the office or depot of such railroad, telegraph, or express company may be open, with an officer or agent of such railroad, telegraph, or express company in charge for the transacting of business.

History: En. Sec. 2, Ch. 182, L. 1907; Sec. 4341, Rev. C. 1907; re-en. Sec. 6580, R. C. M. 1921.

72-626. (6581) Violation of law a misdemeanor. Any railroad, telegraph, or express company, failing or refusing to comply with the provisions of this act after its passage and approval by the governor, shall be deemed guilty of a misdemeanor.

History: En. Sec. 3, Ch. 182, L. 1907; Sec. 4342, Rev. C. 1907; re-en. Sec. 6581, R. C. M. 1921.

72-627. (6582) Duty to furnish shipping facilities. It is hereby made the duty of every person, corporation, and association operating a railroad in the state of Montana to maintain and staff facilities for shipment and delivery of freight, and to ship and deliver freight and accommodate passengers in at least one location, preferably the county seat, in each county through which the line of the railway passes and at any point upon the line of such railway where there is a city or town having a population, according to the last federal decennial census, of not less than one thousand people, provided, however, that this act shall not require the maintenance and staffing of such facilities in any county or at any city or town in which such facilities were not maintained and staffed on the effective date of this act. Nothing in this section shall be construed to authorize the discontinuance of any facility presently established in any city, town or other location having a population of less than one thousand people without a hearing before the board of railroad commissioners as provided by law.

History: En. Sec. 1, Ch. 26, L. 1905; re-en. Sec. 4343, Rev. C. 1907; re-en. Sec. 6582, R. C. M. 1921; amd. Sec. 1, Ch. 266, L. 1969.

Compiler's Note

The effective date of this act was July 1, 1969.

Collateral References

Railroads \$\infty 225.
74 C.J.S. Railroads \\$ 403.
44 Am. Jur. 479 et seq., Railroads, \\$ 254 et seq.

72-628. (6583) Penalty. Any person, corporation, or association which shall, for sixty days after written request of not less than fifty inhabitants of such platted townsite, fail to comply with the provisions of this act, shall, upon conviction, be fined not less than ten dollars nor more than one hundred dollars for each day thereafter, so long as the provisions of this act are not complied with.

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History: En. Sec. 2, Ch. 26, L. 1905; re-en. Sec. 4344, Rev. C. 1907; re-en. Sec. 6583, R. C. M. 1921.

Collateral References
Railroads \$\infty 254(2).
74 C.J.S. Railroads \$ 444.

72-629. (6584) Bulletin boards must be installed in stations. company or corporation managing, operating, or leasing any railroad in this state, that is now or may hereafter be engaged in the transportation of passengers, shall place or cause to be placed in a conspicuous place in and about each and every station or depot where an agent, telephone, or telegraph operator is kept, a bulletin board, and such railway company or corporation shall, for the information of the traveling public, at least three hours before the advertised scheduled time of the arrival of each passenger train stopping upon such route at such station, cause to be posted upon such bulletin board the number of the train, the time such train is due, and the fact whether such train is on scheduled time or not, and, if late, how much, and shall indicate at the end of two hours thereafter any gain or loss of more than fifteen minutes made by such train, and thereafter every thirty minutes any gain or loss of more than fifteen minutes made by such train, on such bulletin board at such station, showing at each time indicated how much said train is running behind its scheduled time, but nothing in this act shall be so construed as to compel such railway company or corporation, leasing, operating, or managing any railroad in this state, to post the number, scheduled time, and lateness of such trains, as arriving or departing from such stations aforesaid, while there is no such agent, telegraph, or telephone operator, or any other person on duty; but immediately after such agent, telegraph, or telephone operator, in charge of such station, comes on duty, such railway company or corporation shall cause to be indicated on said bulletin board the number of any trains then due or overdue, or scheduled to be due within three hours, the time any train or trains are due, and how much the trains are running behind their scheduled time; provided, that any such passenger train, not more than ten minutes late, shall be deemed to be on time as to the operation of this act; provided, also, that when such station is connected by telephone with the central exchange in any town or city, such railway company or corporation, upon request of such central exchange, shall promptly notify such central exchange as to the time of arrival of such passenger train, giving the same information as is posted on said bulletin board, and at the said time of said posting.

History: En. Sec. 1, Ch. 67, L. 1917; re-en. Sec. 6584, R. C. M. 1921.

72-630. (6585) Penalty for violation of preceding section. Every rail-way company or corporation, managing, operating, or leasing any railroad in this state, that shall willfully or negligently violate the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars, nor more than two hundred dollars for each offense; such action to be prosecuted by the county attorney of the county in which the violation occurs, in the name of the state of Montana.

History: En. Sec. 2, Ch. 67, L. 1917; re-en. Sec. 6585, R. C. M. 1921.

72-631. (6586) Passenger rate of three cents per mile. It shall be unlawful for any railroad or railway company operating wholly or in part in the state of Montana, any of the officers or employees thereof, to charge or receive from any person who is to be conveyed or transported on any of the lines of any such railroad or railway companies from any point within this state to another point within this state, a sum exceeding three cents per mile for the distance to be traveled by such person, nor shall any excess fare greater in amount than ten cents be charged or collected from any passenger with promise of rebate or refund of such excess, and that for children between the ages of five and twelve years, not more than one-half of the rate named in this section shall be charged, and that children under five years of age, when accompanied by parent or guardian, shall be transported free of charge; provided, that no railroad or railway company, or the officers or employees thereof, shall be obliged to accept a single fare for a sum less than five cents; provided, that any such railroad or railway company shall not be precluded from selling mileage books at a rate less than three cents per mile. All persons shall have equal right to purchase such mileage books. That all charges for fares shall end in the figures naught or five and such figures shall be the one nearest to the fare computed under the provisions of this act.

It shall be unlawful for any railroad or railway company operating wholly, or in part, in the state of Montana, as aforesaid, to charge, demand or collect or receive from any person who is to be conveyed or transported on any of the lines of any such railroad or railway company or companies, between points within the state, any sum or amount in excess of, or in addition to, the rates hereinbefore fixed and prescribed for and on account of such person or passenger paying or offering to pay in cash on board of trains of such company or companies, the sums or amounts necessary to be transported in accordance with the provisions of this section. It being intended hereby to prohibit and prevent the practice of exacting any additional sum or sums for transportation on account of the payment of the lawful rates in cash on board train, and the practice of issuing rebate slips, certificates or tickets for such excess sums or amounts.

Any railroad or railway company, or any officer or employee thereof, who shall violate any of the provisions of this section, shall upon conviction thereof, be fined as provided in section 72-633.

History: En. Sec. 1, Ch. 87, L. 1905; re-en. Sec. 4349, Rev. C. 1907; amd. Sec. 1, Ch. 250, L. 1921; re-en. Sec. 6586, R. C. M. 1921.

Section Unenforceable

Section held unenforceable in action to enjoin charging fare of three and sixtenths cents per mile. State ex rel. Rankin v. Northern Pacific Ry. Co., 62 M 576, 577, 205 P 959.

Collateral References Carriers 21, 13, 21.

13 C.J.S. Carriers §§ 514 et seq., 580 et seq.
13 Am. Jur. 2d 646 et seq., Carriers, § 105 et seq.

Carrier's right or liability in respect of excess of lawful charge over charge understated where discrimination is forbidden. 83 ALR 245 and 88 ALR 2d 1375.

Right to maintain action against carrier on the ground of excessiveness of rates filed and published by carrier pursuant to law. 97 ALR 420.

72-632. (6587) To what lines applicable. The provisions of the preceding section of this act shall not apply to independent lines of railroads,

or railways operating wholly within the state of Montana, upon which a rate in excess of three cents per mile is now charged, until such time as the state legislature, or other state officers, having power under the laws of Montana to name passenger rates, shall, in their judgment, deem the rate so charged to be excessive.

History: En. Sec. 2, Ch. 87, L. 1905; re-en. Sec. 4850, Rev. C. 1907; re-en. Sec. 6587, R. C. M. 1921.

72-633. (6588) Penalty for violation of law. Any railroad or railway company, or any officer or employee thereof, who shall violate any of the provisions of this act shall, upon conviction thereof, be fined in any sum not less than fifty dollars nor more than five hundred dollars.

History: En. Sec. 3, Ch. 87, L. 1905; re-en. Sec. 4351, Rev. C. 1907; re-en. Sec. 6588, R. C. M. 1921.

72-634. (6589) Party injured to share fine. In any and all cases wherein a conviction is secured for a violation of any provision of this act, the party injured shall be entitled to receive one-half of all fines imposed and collected, and the remaining one-half of such fines imposed and collected shall be paid into the school fund of the city in which the action is prosecuted.

History: En. Sec. 4, Ch. 87, L. 1905; re-en. Sec. 4352, Rev. C. 1907; re-en. Sec. 6589, R. C. M. 1921.

72-635. (6590) Tunnel charges prohibited. It shall be unlawful for any person, association, or corporation, operating, leasing, or owning a railroad in the state of Montana, to accept, demand or receive any tunnel charges, or to accept, demand, or receive any extra mileage, or any extra compensation for or on account of any tunnel through which said line of railroad may run; provided, that none of the provisions of this act shall apply to rates or charges for travel to or from points outside of the state of Montana.

History: En. Sec. 1, p. 164, L. 1901; re-en. Sec. 4353, Rev. C. 1907; re-en. Sec. 6590, R. C. M. 1921.

Collateral References Carriers ∞12. 13 C.J.S. Carriers §§ 277 et seq., 580 et

72-636. (6591) Violation of law a misdemeanor—penalty. Any person, association, or corporation, agent, or manager, who shall violate any provision of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than two hundred dollars nor more than one thousand dollars for each offense.

History: En. Sec. 2, p. 165, L. 1901; re-en. Sec. 4354, Rev. C. 1907; re-en. Sec. 6591, R. C. M. 1921.

Collateral References Carriers©=21. 13 C.J.S. Carriers § 514 et seq.

72-637. (6592) Confiscation of fuel by carrier prohibited. It shall hereafter be unlawful for any person, railway company, or common carrier

to confiscate or take for his or its own use, or for the use of another, any coal or other fuel in transit, except when such coal or other fuel is necessary for the preservation of life or property, or is required for the moving of trains of such common carrier; provided, that in a suit under this act to recover the penalty and damages, the burden of proof shall be on the person, railroad company, or common carrier confiscating the coal or other fuel to show that such coal or other fuel was necessary for the preservation of life or property, or was required for the moving of trains of such common carrier.

History: En. Sec. 1, Ch. 119, L. 1907; Sec. 4355, Rev. C. 1907; re-en. Sec. 6592, R. C. M. 1921.

Collateral References Carriers ₹ 71, 110. 13 C.J.S. Carriers §§ 180 et seq., 521.

72-638. (6593) Liability of carrier for violation of preceding section. Any person, railroad company, or common carrier, who shall confiscate or take any coal or fuel, either for his or its own use or for the use of aonther, shall be liable to the consignee or owner of such coal or fuel, in double the value of such coal or fuel at the point of shipment, and such other damages as may be caused by the confiscation of such coal; such liability to be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confiscating such coal or fuel. But in every case wherein coal or other fuel is taken or used by any such person, railroad company, or common carrier, it shall be the duty of such person, railroad company, or common carrier to notify the consignee by telegram or letter, immediately, of the taking of such coal, and to pay and compensate him therefor within thirty days from the time of the taking.

History: En. Sec. 2, Ch. 119, L. 1907; Sec. 4356, Rev. C. 1907; re-en. Sec. 6593, R. C. M. 1921.

Collateral References Carriers 76, 128. 13 C.J.S. Carriers §§ 147, 245.

72-639. (6594) Violation of law a misdemeanor—penalty. Any person, corporation, or common carrier, who shall violate the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars.

History: En. Sec. 3, Ch. 119, L. 1907; Sec. 4357, Rev. C. 1907; re-en. Sec. 6594, R. C. M. 1921.

72-640. (6595) Obstruction of highway crossings by railroads. It shall hereafter be unlawful for any corporation, association, or company to willfully obstruct, blockade, interfere with, or prevent the free use of any public highway within the state of Montana, where such highway crosses any railroad track outside of incorporated cities and towns, by stopping any railroad train, car, engine, or locomotive for more than fifteen minutes at any one time, or by placing, depositing, or leaving any article or thing whatsoever on any railroad track at the point where any public highway crosses such track outside of incorporated cities and towns, and any corporation, association, or company, so obstructing, blockading, or interfering with the free use of any such highway, shall be deemed guilty

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of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. This act shall not be construed as repealing any existing laws prohibiting encroachments upon, or obstruction of, public highways.

History: En. Sec. 1, Ch. 43, L. 1907; Sec. 4358, Rev. C. 1907; re-en. Sec. 6595, R. C. M. 1921.

Collateral References

Railroads@=246, 255(4). 74 C.J.S. Railroads §§ 434, 457. 44 Am. Jur. 580, Railroads, § 364.

Duty and liability of railroad company to one passing around train which is blocking crossing. 16 ALR 1054. Negligence in leaving cars where they obstruct view at crossing. 47 ALR 287.

Liability of railroad for damages other than those incident to bodily injury for blocking street or highway crossing. 71

Liability of railroad to adult pedestrian attempting to pass over, under, or between cars obstructing crossing. 27 ALR 2d 369.

Standing train: injury due to road vehicle running into train or car standing on highway crossing. 84 ALR 2d 813.

Contributory negligence of child injured while climbing over or through railroad train blocking crossing. 11 ALR 3d

72-641. (6596) Trains to come to full stop at grade crossings. No railway company operating trains within this state shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing; provided, however, that if any railway company or companies, using one or more tracks crossing each other or connecting, in any way, at a common grade, shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them, or either of them, render it safe to pass over said crossings without stopping, and such plant, works, or fixtures shall have been first approved by the county commissioners of the county wherein such works are to be constructed and used, and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such commissioners, then and in that case the foregoing provisions of this section, requiring the stopping of trains at such crossing, shall not apply to said companies, or either of them; and if said county commissioners shall disapprove any such plans so filed with them, or fail to approve the same within twenty days after the filing thereof with them, such railway companies, or either of them, may apply, in the county where such crossing is situated, to the district court in and for said county, or to a judge thereof in vacation, by petition in writing setting forth the object of such application, and said court or judge shall, thereupon, appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon said county commissioners at least ten days before the day appointed for said hearing, and said district court, or a judge thereof in vacation, shall have full power, upon the hearing of said petition, to grant the prayer thereof, or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section, requiring the stoppage of trains at crossings, shall not apply to said railway companies, or either of them, if said district court shall, by its order upon said petition, grant the prayer thereof, or otherwise and to any extent approve the construction and use of the interlocking plant, or other structures therein referred to.

History: En. Sec. 1, Ch. 8, L. 1903; re-en. Sec. 4359, Rev. C. 1907; re-en. Sec. 6596, R. C. M. 1921.

Collateral References Railroads == 240. 74 C.J.S. Railroads § 432.

Validity and construction of stop statute. 2 ALR 156.

Statutes relating to construction or maintenance of crossing in case of intersecting railroads. 40 ALR 712.

72-642. (6597) Fireguards. Every railroad corporation operating its lines of road, or any part thereof, within this state, shall, between the fifteenth day of April and the first day of July in the year 1903, and each succeeding year thereafter, plow in a good and workmanlike manner, covering the sod well, upon each side of its line of road wherever it passes through a range or grazing country, a continuous strip of not less than six feet in width on each side of its track, as a fireguard, which said strip shall, as near as practicable, run parallel with the line or lines of said railroad, and in addition to such plowing, said railroad company shall cause to be burned, between the fifteenth day of July and the fifteenth day of September of each year, all the grass and vegetation between the said plowed strips, and a line of fifty feet inside said plowed strips; provided, that such fireguard so plowed and burned need not be constructed within the limits of any town, village, or city, nor in private fields under cultivation, nor along the line of such railroad whenever the same runs through the mountains, or elsewhere where such plowing or burning would be impracticable; and provided further, that said fireguard, or portion thereof, need not be plowed or burned on or through any lands which may be released from the operation of this act by the board of county commissioners of the county wherein such land is situated, by their written certificate of release filed in the office of the county clerk of the said county; provided further, that said plowing be not less than three hundred feet from the center of the railroad track on each side of same, except in cases of cultivated fields, and then such plowing and burning shall be done closer to such railroad, but not less than seventy feet from the center of the track.

History: En. Sec. 1, p. 163, L. 1901; amd. Sec. 1, Ch. 63, L. 1903; re-en. Sec. 4360, Rev. C. 1907; re-en. Sec. 6597, R. C. M. 1921.

Operation and Effect

One seeking recovery for failure to comply with this section must allege in was situated in a "range or grazing country"; failure to so allege renders testimony relating to a breach of its provisions inadmissible and instructions relating thereto improper. Missoula Trust & Savings Bank v. Northern Pacific R. Co., 76 M 201, 206, 245 P 949.

Collateral References

Railroads = 249, 453. 74 C.J.S. Railroads §§ 435, 485. 35 Am. Jur. 2d 590, Fires, § 10.

Liability of railroad company for failing to aid in extinguishing fire set by its engine without negligence. 3 ALR 509.

Liability for damages from spread of fire started on railroad property by sparks from locomotives. 42 ALR 783; 111 ALR 1140 and 18 ALR 2d 1081.

Constitutionality of statutes imposing absolute liability for fires. 53 ALR 875.

Interference with extinguishment of fire

by operation of train. 71 ALR 917.

72-643. (6598) County commissioners may plow guard and recover expense. If any railroad company fails to comply with any of the provisions of the preceding section, the board of county commissioners of the county wherein such violation occurs shall cause the neglected plowing or burning, or both, therein provided for, to be done, and may, in a suit to be brought in their name as said board, in the district court having jurisdiction, recover double the amount of the cost of such plowing or burning, or both, with reasonable attorney fees to be fixed by the court, and such railroad company shall be liable further for all damages caused by its failure to comply with this act.

History: En. Sec. 2, p. 164, L. 1901; 4361, Rev. C. 1907; re-en. Sec. 6598, R. amd. Sec. 2, Ch. 63, L. 1903; re-en. Sec. C. M. 1921.

72-644. (6599) Duty to construct drain and ditches. It shall be the duty of every corporation, company, or person owning or operating any railroad, or branch thereof, in this state, and of any corporation, company, or person constructing any railroad in this state, within three months after the completion of the same through any county in this state, to cause to be constructed and maintained suitable ditches and drains along each side of the roadbed of such road, or to construct culverts or openings through such roadbed to connect with ditches or drains, or watercourses, so as to afford sufficient outlet to drain and carry off the water along such railroad, whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad; provided, that none of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described, except when required to remove and drain off water accumulated upon property adjacent to or upon the right of way whose natural channel or outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid. And in case such corporation, company, or person shall fail or neglect to construct and maintain such ditches or drains as are herein required, within the time limited in this section, the board of county commissioners of any county, through which such railroad has been, or may be constructed and located, and in which the draining herein required has been neglected, is hereby authorized and required, upon the petition of twenty landowners of such county along the line of and contiguous to such railroad, to cause such ditches or drains as are herein required to be constructed and maintained, and said board of county commissioners may maintain an action against such corporation, company, or person so failing to comply with the provisions of this section, in any court of competent jurisdiction, in the name of such county, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches.

History: En. Sec. 2, Ch. 101, L. 1903; re-en. Sec. 4362, Rev. C. 1907; re-en. Sec. 6599, R. C. M. 1921.

44 Am. Jur. 468 et seq., Railroads, § 247 et seq.

Collateral References
Railroads©=108.
74 C.J.S. Railroads § 186 et seq.

Construction of statutes requiring railroads to provide for the drainage or flow of waters. 19 ALR 2d 967.

72-645. (6602) Medical aid to injured trainmen. In case any railroad trainmen or employee of any railroad doing business in this state shall be injured during his regular course of employment, any employee of said railroad is hereby empowered and authorized to call upon and retain the

services of the nearest practicing physician or surgeon to care for and treat any such injured trainman or employee, during and until such time as one of the regularly employed and paid physicians or surgeons of such railroad corporation is able to render such service.

History: En. Sec. 1, Ch. 95, L. 1909; amd. Sec. 1, Ch. 45, L. 1921; re-en. Sec. 6602, R. C. M. 1921.

53 Am. Jur. 2d 194, Master and Servant, $\S~126.$

Collateral References

Master and Servant 577. 56 C.J.S. Master and Servant § 161 et Proximate cause as affecting liability of railroad company for failure to care for or to furnish medical aid to servant stricken by illness or injury. 64 ALR 2d 1146.

72-646. (6603) Compensation of physician or surgeon. In cases where the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired as provided in the preceding section, such physician or surgeon shall be compensated and paid a reasonable fee for such services performed by him as provided in the preceding section.

History: En. Sec. 2, Ch. 95, L. 1909; re-en. Sec. 6603, R. C. M. 1921.

72-647. (6604) Refusal to pay compensation a misdemeanor. If any railroad corporation refuses or neglects to pay for the services of any such physician as hereinbefore provided for, within a reasonable time after such physician or surgeon has rendered the services therefor, such railroad corporation shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 95, L. 1909; re-en. Sec. 6604, R. C. M. 1921.

72-648. (6605) Liability for death or personal injury. Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad, or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents, and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such person or corporation so operating such railroad, in or about the handling, movement, or operation of any train, engine, or car, on or over such railroad, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

History: En. Sec. 1, Ch. 29, L. 1911; re-en. Sec. 6605, R. C. M. 1921.

Action Joining Causes under Similar State and Federal Liability Acts Not Removable to Federal Courts

A plaintiff did not waive right to trial in state court by joining, with cause of action under Federal Employers' Liability Act, a cause of action under similar state statutes based on identical facts, and action was not removable to federal court. Where injured railroad employee is employed in interstate commerce, his remedy under Federal Employers' Liability Act is exclusive, such act superseding similar state acts (Federal Employers' Liability Act sec. 1 et seq., 45 U. S. C. sec. 51 et

seq.). Hoepfner v. Northern Pacific Ry. Co., 61 F Supp 819, 822.

Burden of Proof

In action by railroad section hand for injuries caused by a tie falling upon him from a car which he, with others, was unloading, a nonsuit was properly granted, his evidence not disclosing negligence on the part of anyone to which the fall of the tie and the consequent injuries could be said to have been attributable. Hassan v. Northern Pacific Ry. Co., 60 M 105, 108, 198 P 446.

Plaintiff has the burden of proving negligence in a personal injury action by an employee against his employer, whether based upon the Employers' Liability Act (this act) or not. Hassan v. Northern Pacific Ry. Co., 60 M 105, 108, 198 P 446.

Common-Law Liability

The purpose of the legislature in enacting this legislation was to substitute for the benefit of railway employees the action provided by it, in place of the commonlaw action, and, in case of death, to create a new cause of action in favor of the dependents named for the pecuniary loss suffered by them. Cornell v. Great Northern Ry. Co., 57 M 177, 187 P 902.

Definition of Railroad

"Railroad," as used in this act, includes a road used for logging purposes. Regan v. Montana Logging Co., 53 M 153, 158, 162 P 388.

Includes Repair of Rolling Stock

This statute includes the repair of rolling stock, and was applicable where carman fell from ladder while replacing vertical siding of freight car in repair shop. Great Northern Ry. Co. v. Wojtala, 112 F 2d 609, 611.

Liberal Construction

This statute is remedial in its nature, and its operation ought not to be limited by narrow construction. Regan v. Montana Logging Co., 53 M 153, 161, 162 P 388; Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 772.

Limitation of Action

Where an amended complaint in an action brought under the federal liability act did not state a new cause of action, the action was barred by the two-year limitation prescribed therein, the amendment relating back to the date of the commencement of the action unaffected by the intervening lapse of time. Gillespie v. Great Northern Ry. Co., 63 M 598, 607, 208 P 1059.

"Operating"

Where plaintiff, a brakeman on defendant's logging road, was also required

to assist in loading and unloading cars, and while doing so he was injured by the breaking of an appliance, the defendant company was "operating" its road at the time of the injury, within the meaning of this act. Regan v. Montana Logging Co., 53 M 153, 159, 162 P 388.

Pleading

Where plaintiff locomotive engineer had but one cause of action against defendant railway company, i.e., its wrongful act in permitting an engine to move on the same track at the same time and in the opposite direction to the engine operated by plaintiff, causing a collision, and in his complaint brought under the federal liability act alleged that he was injured while in the engine whereas at the trial he testified that the injury occurred by coming in contact with the ground as a result of his jumping from the engine to escape the collision, amended complaint filed by leave of court to conform to the facts did not state a new and different cause of action, and therefore refusal to strike it from the files was proper. Gillespie v. Great Northern Ry. Co., 63 M 598, 607, 208 P 1059.

Complaint of a boilermaker who lost sight in one eye while working with an air hammer calking bolts in the firebox of a locomotive alleging by way of conclusion that it was railroad's duty to furnish him with reasonably safe tools and appliances and containing additional averments as to the conditions under which he was required to work and necessity for protective goggles was sufficient to state a cause of action. Morelli v. Great Northern Ry. Co., 89 M 603, 610, 300 P 210.

Scope of Employment

Whether section hand injured by a collision while resting in a caboose standing upon the main line after the dinner hour and waiting to be transported to work was acting within the scope of his employment was jury question. Wegge v. Great Northern Ry. Co., 61 M 377, 385, 203 P 360.

A conductor of a work train was not only acting in furtherance of the operations entrusted to him, but was also within the scope of his authority when, in the temporary absence of the engineer, he assumed charge of the locomotive and in his endeavor to switch a caboose from the main line, where it was a menace to life and limb on account of passing trains, to a sidetrack, caused a collision with the caboose injuring plaintiff. Wegge v. Great Northern Ry. Co., 61 M 377, 385, 203 P 360.

This act covers injuries to railroad employees while engaged in any part of

work connected with, and necessarily and directly contributing to, operation of railroad or handling or movement of any train, engine or car. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 770.

What Are Appliances

Safety shoes used by laborer in railroad shops were "appliances" and "equipment" within the meaning of this section. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 775.

When Jury's Verdict Conclusive as to Negligence

Jury's determination that railroad was negligent as to death of section man struck from rear by work train while shoveling cinders from track was conclusive where evidence was in direct conflict. Kamboris v. Chicago, M. & St. P. R. Co., 62 M 88, 91, 203 P 859.

Collateral References

Master and Servant \$\sim 87, 101(9), 110-113, 137.

56 C.J.S. Master and Servant §§ 173, 227-230.

53 Am. Jur. 2d 206 et seq., Master and Servant, § 139 et seq.

Proximate cause: defect in appliance or equipment as proximate cause of injury to railroad employee in repair or investigation thereof. 30 ALR 2d 1192.

gation thereof. 30 ALR 2d 1192.
Clearance: duty of railroad company toward employees with respect to close clearance of objects alongside track. 50 ALR 2d 674.

Surface of yard, duty of railroad company to prevent injury of employee due to. 57 ALR 2d 493.

Master's liability for servant's injury or death caused in whole or in part by act of God. 62 ALR 2d 796.

Railroad's liability for servant's condition or injury resulting in dermatitis. 74 ALR 2d 1029.

72-649. (6606) Contributory negligence—diminution of damages. In all actions hereafter brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation, so operating such railroad, of any statute enacted for the safety of employees contributed to the injury or death of such employee.

History: En. Sec. 2, Ch. 29, L. 1911; re-en. Sec. 6606, R. C. M. 1921.

Apportionment of Damages

Contributory negligence of plaintiff employee in an action brought under the Federal or State Employers' Liability Acts does not bar recovery but is a fact which may be considered by the jury in apportioning damages. Kamboris v. Chicago, M. & St. P. R. Co., 62 M 88, 91, 203 P 859.

Mitigation of Damages

Contributory negligence on the part of a railroad employee does not bar his right to recover damages for injuries received during the course of his employment; the jury, in such case, being required to diminish the damages "in proportion to the amount of negligence attributable to such employee." Hall v. Northern Pacific Ry. Co., 56 M 537, 186 P 340; Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 771.

This act does not change in any particular the form of the statement of plaintiff's cause of action from that at common law, but does require all the other pleadings to be so formulated as to present the issues arising upon the defenses permitted by it, including matter which may be alleged in mitigation of damages. Cornell v. Great Northern Ry. Co., 57 M 177, 187 P 902.

Pleading and Proof

This act does not change the rule that in a personal injury action the burden of pleading and proving contributory negligence on the part of the plaintiff is upon the defendant. Cornell v. Great Northern Ry. Co., 57 M 177, 187 P 902.

Under the rule of comparative negligence declared by this chapter, contributory negligence on the part of plaintiff is a partial defense which must be pleaded. Cornell v. Great Northern Ry. Co., 57 M

177, 187 P 902.

Failure of carman, injured by fall, to obtain scaffold rather than ladder, which assistant foreman allegedly directed him to use when replacing siding of freight car in repair shop, would not be more than contributory negligence, which does not bar recovery under the Montana Employers' Liability Act. Great Northern Ry. Co. v. Wojtala, 112 F 2d 609, 612.

Collateral References

Master and Servant € 228; Negligence € 101.

56 C.J.S. Master and Servant § 425; 65

C.J.S. Negligence § 172. 53 Am. Jur. 2d 275 et seq., Master and Servant, § 224 et seq.

Construction and effect of comparative negligence rule where there is more than one defendant, or where negligence of nonparties contribute to the injury. 92 ALR 691.

Contributory negligence of railroad employee in jumping from moving train or car to avoid collision or other injury. 58 ALR 2d 1232.

Pleading: necessity and manner of pleading assumption of risk as a defense. 59 ALR 2d 239.

Application of last clear chance doctrine in comparative negligence cases, 59 ALR 2d 1261.

Momentary forgetfulness of danger as contributory negligence. 74 ALR 2d 950.

Three people: comparative negligence where misconduct of three or more persons is involved. 8 ALR 3d 722.

Contributory negligence: comment note on the doctrine of comparative negligence and its relation to the doctrine of contributory negligence. 32 ALR 3d 463.

72-650. (6607) Assumption of risk. An employee of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment, when such risk arises by reason of the negligence of his employer, or of any person in the service of such employer.

History: En. Sec. 3, Ch. 29, L. 1911; re-en. Sec. 6607, R. C. M. 1921.

Defense of Assumed Risk

The defense of assumption of risk may be interposed as a bar in an action for personal injuries to an employee when they have been caused by hazard which is incident to the particular business, or when they have been brought about by an increased hazard occasioned by the failure of the employer to perform his primary duty with relation to the safety of the employee, if the latter was aware of such increased hazard or it was so obvious that an ordinarily prudent person under like circumstances would have observed and appreciated it. Matson v. Hines, 63 M 214, 222, 207 P 474, cert den 260 U S 734, 67 L Ed 487, 43 S Ct 95.

In an action against a railway for injuries to feet of shop laborer resulting from wearing defective and improper safety shoes furnished by the railway, the defense of assumed risk was not available. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 774.

Knowledge of Danger

In an action by a section hand for injuries sustained in lifting a rail, in which the negligence charged was failure of defendant company to furnish a sufficient number of men to assist him in doing the work in hand, held that plaintiff, twenty-eight years of age, familiar with the work he was engaged in, and who

knew, as testified to by him, that it required from six to eight men to lift a rail, weighing from 750 to 800 pounds, with reasonable safety to the men doing the lifting, assumed the risk of injury from overstrain in attempting to lift it in company with three others. Matson v. Hines, 63 M 214, 222, 207 P 474, cert den 260 U S 734, 67 L Ed 487, 43 S Ct 95.

Where an employee, knowing that obedience to an order of his foreman will expose him to injury and that the danger incident to obedience is obvious, glaring and imminent, obeys the command, suffering injury, he assumes the risk; where, however, he has no independent knowledge of danger and relies upon the superior knowledge of his employer, he may rely upon the latter's judgment and assume that the order could be safely obeyed without laying himself open to the defense of assumption of risk. Matson v. Hines, 63 M 214, 222, 207 P 474, cert den 260 U S 734, 67 L Ed 487, 43 S Ct 95.

Under state railroad Employers' Liability Act employee generally assumes risks normally incident to occupation in which he voluntarily engages, but does not assume other and extraordinary risks and those due to employer's negligence until he is made aware thereof or they become so obvious and immediately dangerous that an ordinarily prudent person would observe and appreciate them. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 774.

Whether carman falling from ladder which assistant foreman allegedly directed him to use until scaffold could be found for use in replacing part of siding of freight car in defendant railroad's repair shop assumed the risk of his employment, or risk in using a simple tool, was a jury question. Great Northern Ry. Co. v. Wojtala, 112 F 2d 609.

Collateral References

Master and Servant \$\sim 204.
56 C.J.S. Master and Servant § 360.
53 Am. Jur. 2d 302 et seq., Master and Servant, § 265 et seq.

Contributory negligence or assumption of risk in disobeying rules or directions of master under counter direction by superior. 23 ALR 315.

Right to recover for death of, or injury to servant due to his conscious exposure in attempt to save property. 61 ALR 579.

Assumption of risk of over strain consequent upon failure of other employee to lift his share. 74 ALR 157.

Statute denying to employer defense of assumption of risk as affecting simple tool rule. 91 ALR 786.

Assumption of risk and contributory negligence with injuries arising from improper manner of loading or fastening load on freight ear. 106 ALR 1140.

Distinction between assumption of risk and contributory negligence. 82 ALR 2d 1218.

72-651. (6608) Exemption from liability by contract, etc. Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation so operating such railroad to exempt itself from any liability created by this act, shall, to that extent, be void; provided, that in any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which said action is brought.

History: En. Eec. 4, Ch. 29, L. 1911; re-en. Sec. 6608, R. C. M. 1921.

Collateral References

Contracts 114; Master and Servant 100.

17 C.J.S. Contracts § 262; 56 C.J.S. Master and Servant § 197.
17 Am. Jur. 2d 556, Contracts, § 188;

17 Am. Jur. 2d 556, Contracts, § 188; 53 Am. Jur. 2d 221, Master and Servant, § 158.

72-652. (6609) Headlights for locomotives. It shall be the duty of any person, corporation, or company operating any railroad or railway in this state, within one year after the passage of this act, to equip all locomotive engines used in the transportation of trains over said railroad or railway with electric headlights of not less than fifteen hundred candle power, measured without the aid of a reflector; provided, that this act shall not apply to locomotive engines regularly used in the switching of trains.

History: En. Sec. 1, Ch. 18, L. 1909; re-en. Sec. 6609, R. C. M. 1921.

Collateral References

Duty as to forward light on car or train preceding engine or on engine running backwards. 15 ALR 1529.

Liability of railroad company for injury to livestock frightened by headlights. 29 ALR 1546.

Operation of railroad within clause of contract purporting to relieve the railroad from liability, what causes of loss, within. 2 ALR 2d 1074.

72-653. (6610) Penalty for not using. Any person, corporation, or company operating any railroad or railway in this state, violating the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense.

History: En. Sec. 2, Ch. 18, L. 1909; re-en. Sec. 6610, R. C. M. 1921.

Collateral References
Railroads \$255.
74 C.J.S. Railroads \$456.

(6611) Issuance of bills of lading by railroad station agents. All railway companies operating in the state of Montana, which do not permit bills of lading to be issued by other employees than agents, shall be required to have said bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the shipment is destined. The conductor of the train which receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which said shipment moves, immediately upon the arrival of the train carrying said shipment at said agency station, all data necessary for the issuance of a bill of landing for said shipment. The agent shall immediately issue said bill of lading, and shall deliver the same to the shipper or his agent, or shall, within twenty-four hours after the receipt of said data from the said conductor, for shipment of twenty thousand pounds or over, deposit the said bill of lading in a United States post office, addressed and registered to the consignor, his agent or attorney, of said shipment to his proper post-office address, shipments of less than twenty thousand pounds to be mailed without registering.

History: En. Sec. 1, Ch. 24, L. 1917; re-en. Sec. 6611, R. C. M. 1921.

Cross-Reference

Bills of lading, sec. 87A-7-301 et seq.

Collateral References

Carriers № 47.

13 C.J.S. Carriers § 122 et seq.

13 Am. Jur. 2d 770 et seq., Carriers, § 264 et seq.

Issuance or nonissuance of bill of lading as affecting delivery of freight to carrier. 113 ALR 1469.

Right of carrier as against transferee of bill of lading issued for interstate shipment since Federal Bill of Lading Act to deny receipt of goods. 130 ALR 1315.

Construction and effect of UCC art. 7, dealing with warehouse receipts, bills of lading, and other documents of title. 21 ALR 3d 1339.

72-655. (6612) Violation of preceding section a misdemeanor—penalty. Any railway company operating in the state of Montana violating any provisions of this act shall be guilty of a misdemeanor, and liable to a fine of not less than fifty dollars nor more than one thousand dollars.

History: En. Sec. 2, Ch. 24, L. 1917; re-en. Sec. 6612, R. C. M. 1921.

Collateral References

Carriers 38(1).
13 C.J.S. Carriers §§ 515, 516, 518-521, 524-526, 543, 589.

72-656. (6613) Suitable cars must be furnished for grain or bulk shipments. Hereafter all boxcars furnished by railroad or railway companies, for the transportation of grain or other commodities in bulk, shall be of such construction and in such order as to prevent leakage when such com-

modities are placed or hauled therein; and it is hereby made the duty of all railroad or railway companies to furnish such cars in such condition.

History: En. Sec. 1, Ch. 52, L. 1917; re-en. Sec. 6613, R. C. M. 1921.

Cross-References

Carriage of freight, secs. 8-410 to 8-609. Carrying animals in cruel manner, penalty, sec. 94-1204.

Collateral References

Carriers 40; Railroads 229.
13 C.J.S. Carriers §§ 35-37, 49; 74 C.J.S. Railroads § 424.

72-657. (6614) Duty of railroad, after notice, to place cars in proper condition. Whenever boxcars placed for loading grain or other commodities in bulk are found to be in such condition that they will not afford safe transportation for such commodities, the railroad or railway company shall, upon written complaint to the agent or other person in authority, by the shipper or his representative, who proposes to load said car or cars, within twenty-four hours, cause said car or cars to be properly cleaned and coopered and put in such repair as will afford safe transportation for the commodity to be shipped.

History: En. Sec. 2, Ch. 52, L. 1917; re-en. Sec. 6614, R. C. M. 1921.

72-658. (6615) Right of shipper upon default of railroad company. In case such railroad or railway company shall fail, within twenty-four hours after written complaint has been made by the shipper or his representative, to clean and safely cooper such car or cars, then such shipper or his representative shall have authority to enter upon such car or cars, and properly and safely cooper and clean the same; and said railroad or railway company shall pay for the labor expended in such repairs at the rate of three dollars per eight-hour day, and the actual cost of material used, providing that such charge shall in no case exceed five dollars for each car so coopered.

History: En. Sec. 3, Ch. 52, L. 1917; re-en. Sec. 6615, R. C. M. 1921.

Collateral References

Carriers 40, 45; Railroads 229. 13 C.J.S. Carriers §§ 33-38, 42, 49; 74 C.J.S. Railroads § 424.

72-659. (6616) Repairs may be made by shipper without notice, when. In case any car or cars are placed at a station or siding where there is no representative of said railroad or railway company upon whom complaint may be served, then and in such case the shipper or his representative may at once enter upon the said car or cars and clean and make such repairs as are necessary, and shall be paid for the labor and material expended, as provided in the preceding section.

History: En. Sec. 4, Ch. 52, L. 1917; re-en. Sec. 6616, R. C. M. 1921.

72-660. (6617) Demurrage not to accrue during repairs. It is further provided that no demurrage shall accrue or be collected for the time elapsing while such car or cars are being repaired or cleaned or coopered in accordance herewith.

History: En. Sec. 5, Ch. 52, L. 1917; re-en. Sec. 6617, R. C. M. 1921.

Collateral References
Carriers \$200.
13 C.J.S. Carriers \$335 et seq.

72-661. (6618) Railroad company liable for cost of repairs, cleansing or cooperage. Any person making the repairs upon or cleaning or coopering the cars of any railroad or railway company, as herein provided, may recover the amounts expended therefor in an action at law, upon the refusal of the railroad or railway company to reimburse him.

History: En. Sec. 6, Ch. 52, L. 1917; re-en. Sec. 6618, R. C. M. 1921.

72-662. (6619) Duty of railroad commission to enforce law. It is hereby made the duty of the railroad commission of the state of Montana to enforce the provisions of this act.

History: En. Sec. 7, Ch. 52, L. 1917; re-en. Sec. 6619, R. C. M. 1921.

Prohibition to control action of public service commission. 115 ALR 3 and 159 ALR 627.

Collateral References

Carriers 10. 13 C.J.S. Carriers §§ 18, 568.

72-663. (6620) Locomotive and electric motors to be equipped with numbers. It shall be the duty of every person, corporation, or company operating a railroad or railway in this state to equip all locomotive engines and electric motors used in hauling trains over said railroad or railway with suitable numbers, which numbers shall be displayed at the front and both sides of the headlight on said locomotive engine, or electric motor and to be such size as to be easily read from a passing or meeting train.

History: En. Sec. 1, Ch. 145, L. 1919; re-en. Sec. 6620, R. C. M. 1921.

Collateral References
Railroads 229.
74 C.J.S. Railroads § 427.

72-664. (6621) Hearing of complaint by railroad commission. When a complaint is made to the board of railroad commissioners that any person, corporation, or company operating a railroad or railway in this state, has failed to comply with the provisions of this act, such board shall order a hearing, and shall serve a notice on such person, corporation, or company, at least fifteen days before the date set for such hearing, which notice may be served upon any agent of such person, corporation, or company. At the conclusion of such hearing, the said board of railroad commissioners may make such order in the premises as is deemed necessary, and may prescribe the time within which all such locomotive engines shall be equipped with such numbers.

History: En. Sec. 2, Ch. 145, L. 1919; re-en. Sec. 6621, R. C. M. 1921.

72-665. (6622) Violation of law a misdemeanor—penalty. Any person, corporation, or company operating a railroad or railway in this state, who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars for each offense.

History: En. Sec. 3, Ch. 145, L. 1919; re-en. Sec. 6622, R. C. M. 1921.

Collateral References
Railroads©=255.
74 C.J.S. Railroads & 456.

72-666. (6623) Compensation of railroad employees on removal of division point. That when any railroad or railway company operating its line of road in, into, or through the state of Montana shall move any of its division points or terminals, it shall be liable to any employee of such railroad or railway company for any damage sustained by such employee by reason of any decrease in value of any real property actually occupied by such employee as his place of residence, which decrease in value shall be caused by reason of the removal of such division point or terminal, provided such employee shall have in such property so damaged an estate of freehold. Such damages shall be collectible in any court of competent jurisdiction.

History: En. Sec. 1, Ch. 159, L. 1921; re-en. Sec. 6623, R. C. M. 1921.

Collateral References
Master and Servant ← 72.
56 C.J.S. Master and Servant § 116.

72-667. (6624) Proviso—railroad may post statement. Provided, that when any railroad or railway company in good faith determines upon a change or removal of any division point or terminal, and in good faith posts prominently about its station house, shops, and yards a statement of its intention so to do, in such manner as to give reasonable notice thereof to such employee, it shall not be liable as hereinbefore provided for any decrease in value of any interest in any property purchased after the time of such posting, provided that such division point or terminal shall be changed or removed within six months after the date of such posting.

History: En. Sec. 2, Ch. 159, L. 1921; re-en. Sec. 6624, R. C. M. 1921.

- 72-668. Track motor cars—windshield—wipers—canopy on top. Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars with:
- (1) A windshield of safety glass and a device for wiping rain, snow and other moisture therefrom; such device shall be maintained in good order, and so constructed as to be controlled by the operator of said track motor car, and
- (2) Upon request of the foreman, a canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow, or other inclement weather.

History: En. Sec. 1, Ch. 109, L. 1957.

72-669. Head and rear lights on track motor cars. Every person, firm or corporation, operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars used during the period from thirty (30) minutes before sunset, to thirty (30) minutes after sunrise, with an elec-

tric headlight of such construction and with sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet in advance of such track motor car, any track obstruction, landmark, warning sign, or grade crossing, and further equip such track motor car with a red rear electric light of sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet.

History: En. Sec. 2, Ch. 109, L. 1957.

72-670. Violation—misdemeanor. Every violation of any section of this act is a misdemeanor.

History: En. Sec. 3, Ch. 109, L. 1957.

CHAPTER 7

RAILROAD CROSSINGS-REGULATION

Railroad crossings outside of incorporated cities and towns. Section 72-701. 72-702.

Railroad crossing in unincorporated towns or villages. 72-703. Order of county commissioners requiring construction of crossing.

72-704. Time within which crossing must be completed.

72-705. Power of railroad commission with reference to crossings.

72-706. Hearing to determine reasonableness of order.

72-707. Petition for overhead or underground crossing—hearing of petition.

72-708. Action to determine justness or reasonableness of order.

72-709. Extension of time for compliance with order.
72-710. Liability of railroad companies not affected by law.
72-711. Penalty for failure to comply with order for construction.
72-712. "Railroad company" defined.

72-701. (6625) Railroad crossings outside of incorporated cities and towns. At all places in the state of Montana, outside of incorporated cities and towns where a lawfully established public highway now crosses or shall hereafter cross any railroad, it shall be the duty of the railroad company, owning or operating such railroad, to construct and thereafter maintain, in proper condition, a good and safe crossing.

History: En. Sec. 1, Ch. 148, L. 1919; re-en. Sec. 6625, R. C. M. 1921.

Cross-References

Highways established across railroads, expenses, sec. 32-4013.

Security for life and property, crossing to afford, sec. 72-205(5).

Signal devices, installation, sec. 72-164

Collateral References

Railroads \$\sim 92-97.

74 C.J.S. Railroads § 140 et seq. 44 Am. Jur. 607, Railroads, § 395 et seq.

Constitutionality of statute requiring railroad to construct and maintain private crossing. 12 ALR 227.

Municipal corporation's power to require railroad to eliminate grade crossings. 35 ALR 1322 and 36 ALR 1122.

Constitutional power to compel railroad company to relocate or reconstruct high-way crossing or to pay or contribute to expense thereof. 55 ALR 660; 62 ALR 815 and 109 ALR 768.

Surface of crossing, liability for injury or death of pedestrian due to condition of. 64 ALR 2d 1199.

Liability to owner or occupant of motor vehicle for accident allegedly resulting from defective condition of road surface at crossing. 91 ALR 2d 10.

Law Review

Montana's extra-hazardous railroad crossings, 9 Mont. L. Rev. 1091.

72-702. (6626) Railroad crossing in unincorporated towns or villages. In any unincorporated community ordinarily known as a village or town, where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the board of county commissioners of the county may order the construction and maintenance of such railroad crossing, and upon such order becoming final and effective, it shall be the duty of the railroad company to construct and maintain, in proper condition, a good and safe crossing. The board of county commissioners may order more than one railroad crossing in such unincorporated community, as in this section provided, when the public necessity and convenience require more than one such crossing to afford reasonable facilities for public travel.

History: En. Sec. 2, Ch. 148, L. 1919; re-en. Sec. 6626, R. C. M. 1921.

72-703. (6627) Order of county commissioners requiring construction of crossing. Whenever any board of county commissioners shall order the construction of any railroad crossing, said board shall enter an order upon its minutes specifying the place of such crossing, and a copy of said order shall be served upon the railroad company, and a copy shall also be immediately mailed to the board of railroad commissioners of the state of Montana. Service of said order may be made upon the railroad company by delivering such copy to any station agent employed in connection with the operation of said railroad in said county.

History: En. Sec. 3, Ch. 148, L. 1919; re-en. Sec. 6627, R. C. M. 1921.

72-704. (6628) Time within which crossing must be completed. It shall be the duty of a railroad company to construct a crossing ordered by the board of county commissioners of any county within sixty days after service of such order; provided, however, that in case any crossing shall be ordered requiring any extended period of construction, such additional time as is reasonably necessary to complete the same shall be allowed by the said board of railroad commissioners upon the proper application for such extension.

History: En. Sec. 4, Ch. 148, L. 1919; re-en. Sec. 6628, R. C. M. 1921.

72-705. (6629) Power of railroad commission with reference to crossings. The said board of railroad commissioners is hereby given full power to enforce the orders of any board of county commissioners for the construction of railroad crossings, and is likewise given full power to pass upon the reasonableness of any such order to modify, change, or annul the same.

History: En. Sec. 5, Ch. 148, L. 1919; train as measure of railroad's duty as to warning at highway crossing. 5 ALR 2d

Collateral References

Customary or statutory signals from

72-706. (6630) Hearing to determine reasonableness of order. Whenever any railroad crossing has been ordered by the county commissioners, as herein provided, the railroad company may, within thirty days after the

service of such order, serve upon the board of railroad commissioners a notice stating why such order is considered unreasonable or unjust, and request that the board of railroad commissioners hold a hearing for the purpose of determining whether or not the construction of such crossing should reasonably be required. The board of railroad commissioners shall thereupon institute a hearing for said purpose, and all interested parties shall be given reasonable notice and an opportunity to be heard, and said board of railroad commissioners may, after such hearing, either affirm, modify, or annul such order.

History: En. Sec. 6, Ch. 148, L. 1919; re-en. Sec. 6630, R. C. M. 1921.

(6631) Petition for overhead or underground crossing—hearing of petition. No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners. The board of railroad commissioners may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed, and is required by the provisions of this act, provided, in its judgment, the safety, necessity, and convenience of the traveling public require such crossing. When any such petition or request is presented, the board of railroad commissioners shall fix a date for hearing the same, and shall give at least ten days' written notice to the board of county commissioners, and the owner or operator of the railroad to be affected by such order, of the time fixed for the hearing. At such hearing, the said board of railroad commissioners shall hear all testimony offered as to the safety, necessity, and convenience of the traveling public requiring such a crossing, the expense of constructing and maintaining the same, and make such investigation and inspection of the conditions at the place of crossing as may be deemed necessary or advisable, and shall thereupon determine whether such order should be made. In the event an overhead or underground crossing is ordered, the board of railroad commissioners may, in its discretion, require the same to be constructed and maintained by and at the expense of the railroad company, or may apportion the expense between the railroad company and the county in which said crossing is located. The part of the expense apportioned to said county, if any, shall be paid to the railroad company from the funds of said county properly applicable to the payment of such expense.

History: En. Sec. 7, Ch. 148, L. 1919; re-en. Sec. 6631, R. C. M. 1921.

72-708. (6632) Action to determine justness or reasonableness of order. The board of county commissioners, or the railroad company affected by an order or decision of the board of railroad commissioners made pursuant to the provisions of this act, may commence an action in any court having jurisdiction to determine the justness and reasonableness of such order or decision, and in any such action the order or decision sought to be reviewed shall prima facie be deemed just, reasonable, and proper.

History: En. Sec. 8, Ch. 148, L. 1919; re-en. Sec. 6632, R. C. M. 1921.

72-709. (6633) Extension of time for compliance with order. In the event of an application to the board of railroad commissioners to review any order made by the board of county commissioners, and in the event of any action to review any order or decision of the board of railroad commissioners as herein provided, the time within which to comply with said order shall be extended, and the railroad company shall have sixty days after the said order or decision becomes final and effective within which to comply with the same. The time for compliance as herein provided may be extended, for good cause shown, by the board of railroad commissioners of the state.

History: En. Sec. 9, Ch. 148, L. 1919; re-en. Sec. 6633, R. C. M. 1921.

72-710. (6634) Liability of railroad companies not affected by law. Nothing in this act contained shall in any way affect the liability of any railroad company for damage to persons or property injured at any crossings.

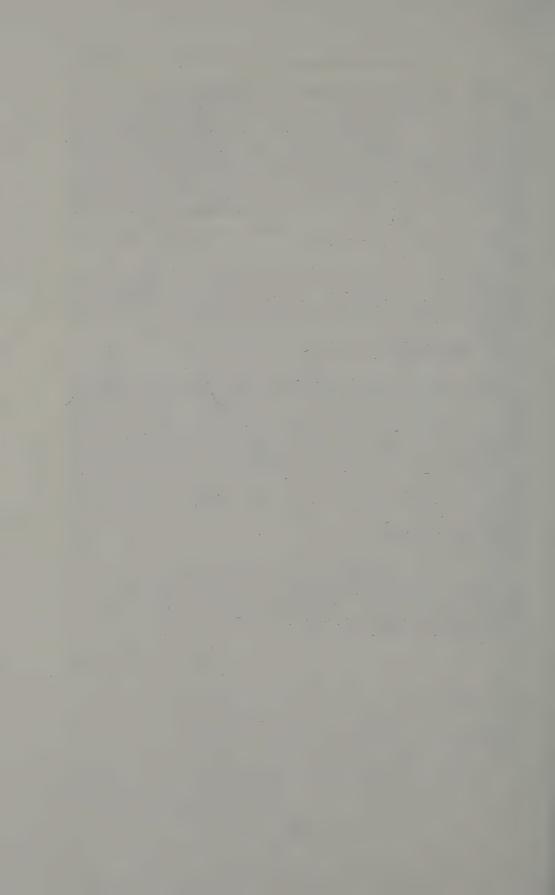
History: En. Sec. 10, Ch. 148, L. 1919; re-en. Sec. 6634, R. C. M. 1921.

72-711. (6635) Penalty for failure to comply with order for construction. Any railroad company failing to construct any crossing after the order or decision requiring the construction of same has become final, within the time herein provided, or within any extension of time granted by the said board of railroad commissioners, shall, for each day's failure, pay to the state of Montana a fine of not less than ten dollars nor more than one hundred dollars, to be recovered in a civil action in the name of the state of Montana, and it shall be the duty of the county attorney of the county within which is located the site of the proposed crossing to prosecute such action.

History: En. Sec. 11, Ch. 148, L. 1919; re-en. Sec. 6635, R. C. M. 1921.

72-712. (6636) "Railroad company" defined. The words "railroad company," as herein used, shall be taken and construed to mean any corporation, person, or association of persons owning or operating a railroad.

History: En. Sec. 12, Ch. 148, L. 1919; re-en. Sec. 6636, R. C. M. 1921.



TITLE 73

RECORDING TRANSFERS

- Chapter 1. Recording transfers-release of oil, gas and mineral leases, 73-101 to 73-116.
 - Effect of recording or failure to record conveyance of real property, 73-201 to 73-212.

CHAPTER 1

RECORDING TRANSFERS-RELEASE OF OIL, GAS AND MINERAL LEASES

Section 73-101. What may be recorded-recording certified copies in another county.

73-101.1. Instruments to include abstracts.

73-102. Judgments may be recorded without acknowledgment.

Recording of return of sale under decree of court.

73-104. Letters patent and other federal and state documents to be recorded without acknowledgment.

73-105. Acknowledgment of instruments required, except when.

Acknowledgment of instruments required, except when—certified instruments recorded, when. 73-106.

73-107. Transfers in trust, etc.

73-108. Fees of recorder to be endorsed.
73-109. Registration of ranch owners.
73-110. In what office.

73-111. Instrument—when deemed recorded.

73-112. Books of record. 73-113. Duties of recorder.

73-114. Oil, gas and mineral leases, release of record of.

73-115. Action to compel release—damages—attorney's fees—release without suit.

73-116. Demand for release—when and upon whom to be made.

73-101. (6890) What may be recorded—recording certified copies in another county. Any instrument or judgment, affecting the title to or possession of real property, may be recorded under this chapter. When any instrument or judgment, affecting the title to or possession of real property, situated in more than one county in this state, has been recorded in either of such counties, a copy thereof, certified to by the county clerk of the county in which it has been recorded, may be recorded in any other county in this state wherein any portion of the real property affected by such instrument or judgment is situated, and such records will have the same effect as if the original instrument or judgment had been so recorded.

History: Earlier laws regulating the execution and recording of conveyances of realty were Ch. 18, pp. 395 to 404, Cod. Stat. 1871; re-en. Secs. 178-299, Rev. Stat. 1879, and as Secs. 235-287, 5th Div. Comp.

This section en. Sec. 1570, Civ. C. 1895; re-en. Sec. 4643, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1919; re-en. Sec. 6890, R. C. M. 1921. Cal. Civ. C. Sec. 1158. Field Civ. C. Sec. 508.

Cross-References

County clerk's duties, sec. 16-2901 et

seq.
Offering forged instruments for record, penalty, sec. 94-2724.

Certificate of Sale

A certificate of sale issued by the sheriff is a conveyance within meaning of the Recording Act. Lepper v. Home Ranch Co., 90 M 558, 565, 4 P 2d 722.

Collateral References

Judgment € 277-293; Records € 1, 6. 49 C.J.S. Judgments § 122 et seq.; 76 C.J.S. Records §§ 1, 10. 46 Am. Jur. 2d 413 et seq., Judgments, § 152 et seq.; 45 Am. Jur. 434 et seq., Records and Recording Laws, § 28 et seq.

Solid mineral royalty as real or personal property for recording purposes. 68 ALR 2d 735.

- 73-101.1. Instruments to include abstracts. For the purposes of Title 73, chapter 1 and Title 39, chapter 1 the word instrument shall include an abstract of an instrument which contains:
 - (a) The names and addresses of the parties thereto.
 - (b) A description of the real property affected.
 - (c) A statement that this is an abstract of another document.
 - (d) A short statement of the effect of the document abstracted.
- (e) The name and address of the person who will provide a full and complete copy of the document abstracted, without cost, upon request of any person.
- (f) And shall be executed and acknowledged or proved by all parties executing the abstracted document.

History: En. Sec. 2, Ch. 218, L. 1971.

73-102. (6891) Judgments may be recorded without acknowledgment. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

History: En. Sec. 1571, Civ. C. 1895; re-en. Sec. 4644, Rev. C. 1907; re-en. Sec. 6891, R. C. M. 1921. Cal. Civ. C. Sec. 1159.

Collateral References

45 Am. Jur. 445, Records and Recording Laws, § 44.

73-103. (6891.1) Recording of return of sale under decree of court. Where real estate is sold under a decree of court, return of such sale shall be made, and filed in the office of the clerk of court. The clerk shall record the return so made, the same as if it were to an execution wherein a levy upon real estate had been made; provided, that where the return contains a true copy of the decree of court under which such sale was made, the clerk shall record all of the return except such copy of the decree, and in lieu of recording such copy, shall insert in the record the following:

History: En. Sec. 1, Ch. 42, L. 1927.

Collateral References
Judicial Sales \$30.
50 C.J.S. Judicial Sales § 24.

73-104. (6892) Letters patent and other federal and state documents to be recorded without acknowledgment. Letters patent from the United States, or from the state of Montana, or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States, or the state of Montana, which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing

law, may be recorded without acknowledgment or further proof; and where letters patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original, for title or for evidence, until the said original letters patent be recorded.

History: En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C. 1907; re-en. Sec. 6892, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1957. Cal. Civ. C. Sec. 1160.

Collateral References
Public Lands 112, 158½.
73 C.J.S. Public Lands §§ 192, 253.

73-105. (6893) Acknowledgment of instruments required, except when. Before an instrument can be recorded, unless it belongs to the class provided for in either sections 73-102, 73-104, 39-124 or 39-125, its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president, vice-president, secretary, or assistant secretary, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections 39-120 and 39-121, and the acknowledgment or proof certified in the manner prescribed by sections 39-101 to 39-130.

History: En. Sec. 1573, Civ. C. 1895; re-en. Sec. 4646, Rev. C. 1907; re-en. Sec. 6893, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1931; amd. Sec. 1, Ch. 170, L. 1937. Cal. Civ. C. Sec. 1161. Based on Field Civ. C. Sec. 509.

Bill of Sale

A real estate bill of sale which was not acknowledged or proved was not entitled to record under this section, and therefore its record imparted no constructive notice to anyone. Baum v. Northern Pacific Ry. Co., 55 M 219, 222, 175 P 872.

Constructive Notice

To entitle an instrument to be recorded under this section, it must be acknowledged by the party who is bound by it to the performance of an act; acknowledgment by the party to whom he is bound is of no avail, and record of it in the latter case imparts no constructive notice whatever. Lee v. Laughery, 55 M 238, 244, 175 P 873.

For record of instrument to impart "constructive notice," the writing must be one

which the law authorizes to be recorded and not one that is illegally placed of record in violation of the express mandate of statute. Lee v. Laughery, 55 M 238, 175 P 873; Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 728.

Grazing Lease

A grazing lease which was not acknowledged or proved as required by this section was not entitled to be recorded and it imparted no constructive notice to anyone. Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 728.

Collateral References

Acknowledgment 1-4.

1 C.J.S. Acknowledgments §§ 1-6, 9, 10, 13-16.

45 Am. Jur. 452, Records and Recording Laws, § 60.

Sufficiency of certificate of acknowledgment, 25 ALR 2d 1124.

Record of instrument without or having insufficient acknowledgment as notice. 59 ALR 2d 1299.

73-106. (6894) Acknowledgment of instruments required, except when —certified instruments recorded, when. An instrument, proved and certified pursuant to sections 39-120 and 39-121, may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

6894, R. C. M. 1921, Cal. Civ. C. Sec. 1162. History: En. Sec. 1574, Civ. C. 1895; re-en. Sec. 4647, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 510.

73-107. (6895) Transfers in trust, etc. Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage or abstract of such document are required to be recorded in the cases specified in the chapters on the special relation of debtor and creditor, and the chapter on mortgages, respectively.

History: En. Sec. 1575, Civ. C. 1895; re-en. Sec. 4648, Rev. C. 1907; re-en. Sec. 6895, R. C. M. 1921; amd. Sec. 4, Ch. 218, L. 1971. Cal. Civ. C. Sec. 1164. Field Civ. C. Sec. 511.

Cross-Reference

Recording of mortgages, sec. 52-205.

Collateral References

Assignments for Benefit of Creditors 163; Mortgages 90.

6 C.J.S. Assignments for Benefit of Creditors § 118; 59 C.J.S. Mortgages § 202. 45 Am. Jur. 442, Records and Recording Laws, §§ 40, 41.

73-108. (6896) Fees of recorder to be endorsed. The county clerk must, in all cases, endorse the amount of his fee for recording on the instrument recorded.

History: En. Sec. 1576, Civ. C. 1895; re-en. Sec. 4649, Rev. C. 1907; re-en. Sec. 6896, R. C. M. 1921. Cal. Civ. C. Sec. 1165. Collateral References Records 5-6. 76 C.J.S. Records § 9.

(6897) Registration of ranch owners. The owner of any farm or ranch in the state of Montana may, upon the payment of one dollar to the county clerk and recorder in the county in which the farm or ranch may be situated, have the name of such farm or ranch entered and recorded in a register, which the county clerk and recorder shall keep for such purpose, and thereupon such owner shall be, by said clerk and recorder, furnished a certificate issued under the seal of said official, setting forth therein the name and location of the farm or ranch, and the name of such owner; provided, that when any name shall have been recorded as hereinbefore provided, any other person or persons shall not have the right to use the same name for any other farm or ranch in the same county, except by prefixing or adding thereto designating or other identifying words.

History: En. Sec. 1, Ch. 49, L. 1913; re-en. Sec. 6897, R. C. M. 1921.

Collateral References

Trade Regulation 133-136.

87 C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 130.
52 Am. Jur. 532, Trademarks, Tradenames and Trade Practices, § 40.

73-110. (6898) In what office. Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

History: En. Sec. 1590, Civ. C. 1895; 6898, R. C. M. 1921. Cal. Civ. C. Sec. 1169. re-en. Sec. 4650, Rev. C. 1907; re-en. Sec. Based on Field Civ. C. Sec. 512.

73-111. (6899) Instrument—when deemed recorded. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record.

History: En. Sec. 1591, Civ. C. 1895; re-en. Sec. 4651, Rev. C. 1907; re-en. Sec. 6899, R. C. M. 1921. Cal. Civ. C. Sec. 1170. Based on Field Civ. C. Sec. 513.

Law Review

Cromwell, "The Improvement of Conveyancing in Montana—A Proposal," 22 Mont. L. Rev. 26, 35 (Fall 1960).

73-112. (6900) Books of record. Grants, absolute in terms, are to be recorded in one set of books, and mortgages, and securities in the nature of mortgages, in another.

History: En. Sec. 1592, Civ. C. 1895; re-en. Sec. 4652, Rev. C. 1907; re-en. Sec. 6900, R. C. M. 1921. Cal. Civ. C. Sec. 1171.

73-113. (6901) **Duties of recorder.** The duties of county clerks, in respect to recording instruments, are prescribed by sections 16-2901 to 16-2925

History: En. Sec. 1593, Civ. C. 1895; re-en. Sec. 4653, Rev. C. 1907; re-en. Sec. 6901, R. C. M. 1921. Cal. Civ. C. Sec. 1172. Based on Field Civ. C. Sec. 514.

Compiler's Note

Section 16-2921, referred to in this section, was repealed by Sec. 10-102, Ch. 264, Laws 1963.

73-114. (6902) Oil, gas and mineral leases, release of record of. When any oil, gas, or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his successor or assigns, within sixty days from the date this act shall take effect, if the forfeiture occurred prior thereto, and within sixty days from the date of the forfeiture of any and all leases, to have such lease or abstract of such lease released from record in the county where the leased land is situated without cost to the owner thereof.

History: En. Sec. 1, Ch. 22, L. 1917; re-en. Sec. 6902, R. C. M. 1921; amd. Sec. 5, Ch. 218, L. 1971.

Construction

An oil and gas lease should be construed strictly against the lessee and in favor of the lessor. Daley v. Torrey, 69 M 599, 601, 223 P 498.

Definition of Forfeiture

The word "forfeiture" as used herein means the deprivation of the right of the lessee to further remain in possession under the lease in consequence of a nonperformance of an obligation or condition resting upon him thereunder. Steven v. Potlatch Oil & Refining Co., 80 M 239, 249, 260 P 119.

Development

Lessor who intends to claim forfeiture, where development is an element, has the duty to demand that development proceed or commence. Braun v. Mon-O-Co Oil Corp., 133 M 101, 320 P 2d 366.

Implied Covenant To Drill Offset Wells

Alleged failure to drill offset wells for protection of leased acreage in accordance with implied covenant to do so was not a breach of contract where there was no market for the gas that would be produced and the drilling would thus have been a useless act. Severson v. Barstow, 103 M 526, 532, 63 P 2d 1022.

Implied Covenant To Find Market

Where the principal consideration for a lease on oil or gas lands is the payment of royalty, the lease, silent on the subject, carries an implied covenant to use reasonable diligence to market the product. Severson v. Barstow, 103 M 526, 532, 63 P 2d 1022.

Operations after Forfeiture

After forfeiture of an oil and gas lease has been declared and demand made for its return for nonperformance of the condition to commence drilling operations within a given time, it is immaterial that the lessee thereafter commenced drilling, and the lessee's failure to release the lease of record within sixty days entitles the lessor to prosecute his action under sections 73-114 to 73-116. Solberg v. Sunburst Oil & Gas Co., 76 M 254, 259, 246 P 168.

Time for Demanding Release

Lessor is not required to wait sixty days after forfeiture before making de-

mand but may do so at any time, provided suit is not commenced before the expiration of the sixty-day period during which it is the duty of the lessee to make re-lease. Steven v. Potlatch Oil & Refining Co., 80 M 239, 249, 260 P 119.

Written Notice Not Required

The lessor of oil and gas rights is not required to give written notice of his intention to declare a forfeiture of the lease for failure of the lessee to commence drilling operations within the time stipulated, to entitle him to prevail in an action brought under sections 73-114 to 73-116. Solberg v. Sunburst Oil & Gas Co., 76 M 254, 259, 246 P 168.

Written Portion of Lease Controlling

Written paragraph in lease providing that in event well was not commenced within the time limit mentioned in the lease the instrument should be null and void was controlling as against a printed one under which, if the operations were not commenced within that time, the lessor should pay two dollars per acre for each additional year commencement of drilling was delayed. Daley v. Torrey, 69 M 599, 601, 223 P 498.

Collateral References

Mines and Minerals \$\opin_70(4), 78(6).
58 C.J.S. Mines and Minerals \$\sqrt{8}\$ 190, 205. 54 Am. Jur. 2d 323, Mines and Minerals, § 141.

Mistake, accident, inadvertence, etc., or ground for relief from termination or forfeiture of oil or gas lease for failure to complete well, commence drilling, or pay rental strictly on time. 5 ALR 2d 993.

Nonpayment of rent, relief against for-feiture of lease for. 31 ALR 2d 321.

Marketing, duty of lessee or assignee of oil or gas lease as regards marketing or delivery for marketing of oil and gas discovered. 71 ALR 2d 1219.

Implied obligations, lessee's obligation to conduct search for, or to develop or work premises for minerals other than

oil and gas. 76 ALR 2d 721.

Marketing, duty of lessee or assignee of mineral lease other than lease for oil and gas, as regards marketing or delivery for marketing of mineral products. 77 ALR 2d 1058.

Implied obligations, right of lessor to cancel oil or gas lease for breach of im-plied obligation to explore and develop further after initial discovery of oil or gas, in absence of showing of reasonable expectation of profit to lessee from further drilling. 79 ALR 2d 792. Payment of stipulated minimum royal-

ties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment. 87 ALR 2d 1076.

Right and measure of recovery for breach of obligation to drill exploratory oil or gas wells. 4 ALR 3d 284.

"Dry hole" as "well" within undertaking to drill well. 15 ALR 3d 450.

Construction of oil and gas lease as to lessee's right and duty of geophysical or seismograph exploration or survey. 28 ALR 3d 1426.

Law Review

Remedies for breach of implied covenants in oil and gas leases in Montana. 28 Mont. L. Rev. 187, 194 (Spring 1967).

73-115. (6903) Action to compel release—damages—attorney's fees release without suit. Should the owner of such lease neglect or refuse to execute a release as provided by this act, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his successor or assigns, the sum of one hundred dollars (\$100.00) as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant. In all such actions writs of attachment may issue as in other cases. If, in such action, the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the holder of the lease. Issues in regard to such fees shall be determined in the same manner as other issues in such actions.

When, by its terms, any such oil and/or gas lease has expired and is subject to forfeiture for nonperformance and more than three (3) years has elapsed since said expiration, the owner of the leased premises may, in addition to all other remedies, serve a written notice on said lessee or

on the assignee thereof, which notice shall state the name of the lessor, the lessee, and the assignee thereof if assigned; the date of the lease; the date of the expiration thereof; description of the lands leased; the place, book and page where recorded; and shall state that unless said lease or abstract of such lease is released of record, or the lessee or the assignee thereof shall, within sixty (60) days from the date of service thereof, file an affidavit in the county clerk's office in the county wherein such lease or abstract of such lease is recorded and deliver a copy thereof to the owner of the leased lands stating that said lease is in effect, otherwise, said lease shall be terminated and of no effect and shall cease to be a lien upon the lands described therein.

If the lessee of the assignee thereof resides in the county where said lease or abstract of such lease is recorded, the notice shall be personally served on said person or persons. If said lessee or the assignee thereof does not reside in said county, but his, her or its address appears on the records in that county clerk's office, or is otherwise known, such notice shall be mailed by registered mail to such person, or persons, at such address, and in addition thereto, such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which said lands are situated, and said notice shall likewise be published in the manner as above provided if the address of the lessee or assignee is unknown. The date of service of said notice, if served personally; the date of mailing, if served by mail; and the first date of publication of said notice, if published, must be at least sixty (60) days before the date of termination referred to in said notice. Upon the expiration of the time mentioned in said notice, if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit or service thereof in the county clerk's office of said county and the affidavit shall be kept as a permanent file in his office, and such proof of notice when so filed shall be prima facie evidence of the sufficiency of the notice, and from and after the filing thereof said lease shall be terminated and the lands released from the lien thereof.

History: En. Sec. 2, Ch. 22, L. 1917; re-en. Sec. 6903, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1929; amd. Sec. 1, Ch. 146, L. 1947; amd. Sec. 6, Ch. 218, L. 1971.

Abatement of Action

Although plaintiff's land was sold on foreclosure sale after his action for damages brought under sections 73-114 to 73-116 was commenced, the period of redemption having expired prior to retrial of the cause, it did not result in the abatement of the action under section 93-2824 (since repealed). Solberg v. Sunburst Oil & Gas Co., 76 M 254, 276, 246 P 168.

Attorney's Fees

Where both lessor and lessee secured a portion of the relief they sought in action for cancellation of gas lease, neither party was required to pay the other's attorney's fees. Severson v. Barstow, 103 M 526, 535, 63 P 2d 1022.

Since this statute authorizes recovery of attorneys' fees as of course, the trial court may act upon its own knowledge concerning value of attorneys' services and award fee without taking evidence. Stanolind Oil & Gas Co. v. Guertzgen, 100 F 2d 299, 302.

Burden To Prove Diligence To Find Market

In an action under sections 73-114 to 73-116 to cancel gas lease for failure to find market for gas produced, burden is upon lessee to establish fact that he used reasonable diligence in trying to find a market. Severson v. Barstow, 103 M 526, 532, 63 P 2d 1022.

Damages

To warrant recovery of special damages, i.e., such damages as are the natural but not the necessary result of defendant's wrongful act, they must be pleaded. Sol-

berg v. Sunburst Oil & Gas Co., 73 M 94, 101, 235 P 761.

Proof that lessee's failure to make release prevented lessor from making a new lease was admissible to show nominal damages recoverable under this section, but inadmissible to show special damages. Solberg v. Sunburst Oil & Gas Co., 73 M 94, 101, 235 P 761.

Drilling Operations

In an action to have an oil and gas lease forfeited for failure of the lessee to "commence drilling operations for oil" within the time specified in the lease, held that the quoted phrase meant the commencement of actual drilling and not the commencement of preliminary work necessary to such drilling; that evidence that the well was not "spudded in" was sufficient to make out a prima facie case, and that therefore the granting of a nonsuit was error. Solberg v Sunburst Oil & Gas Co., 73 M 94, 101, 235 P 761.

Grant by Lessor

Where the lessor of oil and gas lands, after making demand for cancellation of the lease required by section 73-116, conveyed title by warranty deed to another, both thereafter had a remedial interest in the cause of action for cancellation of the lease, and they having joined as plaintiffs in the action commenced after passing of title, failure of the grantee to make demand upon the lessee to clear the record of the instrument prior to action did not destroy their right to maintain it, demand by the lessor having been sufficient to meet the requirement of the section. Abell v. Bishop, 86 M 478, 489, 284 P 525.

Limitation of Action

An action for the cancellation of record of an oil and gas lease which had theretofore been declared forfeited was not an action "upon a statute for a penalty or forfeiture," within meaning of section 93-2606 prescribing two years' statute of limitation, nor one "upon a liability created by statute other than a penalty or forfeiture" for which a like limitation was prescribed by section 93-2607. Abell v. Bishop, 86 M 478, 489, 284 P 525.

A statute which gives a right that existed prior thereto and merely increases the damages by adding a penalty, as do sections 73-114 to 73-116, which grant the right to maintain an action to clear title from a cloud created by a recorded oil and gas lease, valid on its face but void or voidable as to plaintiff lessor's title, is remediable in character and is not a penalty statute within meaning of the

statute of limitations. Abell v. Bishop, 86 M 478, 489, 284 P 525.

Nature of Action

An action to compel the release of an oil and gas lease of record on the ground that the lessee had failed to commence drilling operations within the time fixed in the lease, by reason of which it became forfeited, and for the recovery of the statutory penalty, damages and attorney's fees (73-114 to 73-116) is one at law, entitling plaintiff to a jury trial. Solberg v. Sunburst Oil & Gas Co., 70 M 177, 180, 225 P 612.

An action for the cancellation of an oil and gas lease, for recovery of damages and the statutory penalty for failure to release, brought under sections 73-114 to 73-116, is one at law, even though incidentally it calls for equitable relief. Berthelote v. Loy Oil Co., 95 M 434, 446, 28 P 2d 187; Stranahan v. Independent Nat. Gas Co., 98 M 597, 41 P 2d 39.

Action under these sections is one at law, but embodies principle of equitable relief; court should seek to do equity as between the parties. Severson v. Barstow, 103 M 526, 533, 63 P 2d 1022.

Object of Action To Clear Record of Forfeited Lease

The primary object of an action brought under sections 73-114 to 73-116 is to clear the record of the cloud on title to oil and gas lands cast thereon by a forfeited lease, not to recover the penalty therein provided for; therefore where the court decreed cancellation of a lease but did not award the penalty, appellant lessor's contention that primary relief, to wit, the penalty having been refused, the incidental relief—cancellation—was improper, had no merit. Abell v. Bishop, 86 M 478, 489, 284 P 525.

Venue of Action

Although an action under this section combines three different causes of action, (1) an action for cancellation of the lease, (2) an action for the statutory penalty, and (3) an action for damages, the principal cause of action is for cancellation of the lease, which is a local nontransitory action in rem, and the defendant is not entitled to a change of venue as to any part of the action from the county where the real estate is located to the county of his residence. Beavers v. Rankin, 142 M 570, 385 P 2d 640.

Collateral References

Mines and Minerals \$\infty 70(6), 78(7).
58 C.J.S. Mines and Minerals \$\sqrt{192},
208.

73-116. (6904) Demand for release—when and upon whom to be made. At least twenty days before bringing the action provided for in this act, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease (if such demand by ordinary diligence can be made in this state) that said lease or abstract of such lease be released of record. Such demand must be written. When written, a letterpress or carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

History: En. Sec. 3, Ch. 22, L. 1917; re-en. Sec. 6904, R. C. M. 1921; amd. Sec. 7, Ch. 218, L. 1971.

Collateral References

Mines and Minerals 50 (4), 78(6). 58 C.J.S. Mines and Minerals §§ 190,

CHAPTER 2

EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section 73-201. Record—to whom notice—recording copies. 73-201.1. Abstract of conveyance or encumbrance.

73-202. Conveyances to be recorded, or are void, etc.

73-203. Conveyances defined.

73-204. Powers of attorney-how revoked.

73-205. Unrecorded instruments valid between the parties.

73-206. Designation of grantee in conveyance of real estate as trustee when terms of trust not set forth-effect of.

73-207. Validation of conveyances recorded after defective execution. 73-208. Validation of conveyances recorded after defective execution.

Validation of conveyances recorded after defective execution-1965 73-209.

act.

73-210. Validation of conveyances recorded after defective execution-1967 act.

Validation of conveyances recorded after defective execution-1969 73-211.

73-212. Validation of conveyances recorded after defective execution-1971

73-201. (6934) Record—to whom notice—recording copies. Every conveyance of real property acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance. Further, every conveyance and/or encumbrance of real property acknowledged or proved, and certified, and recorded as prescribed by law, and which is executed by one who thereafter acquires an interest in the said real property by a conveyance which said conveyance is constructive notice as aforesaid, is, from the time such latter conveyance is filed with the county clerk for record, constructive notice of the contents of such earlier conveyance and/or encumbrance to subsequent takers, purchasers, mortgagees, or other encumbrance[r]s or transferees.

Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1967. Cal. Civ. C. Secs. 1213, 1218. History: Ap. p. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd.

Constructive Notice to Whom

The record of an instrument is constructive notice to subsequent purchasers and encumbrancers only, and does not affect a prior purchaser though he has not acquired the legal title nor made full payment of the purchase price. Piccolo v. Tanaka, 78 M 445, 451, 253 P 890.

Description of the Property

In order to give a mortgagee priority as against a subsequent purchaser or mortgagee, the mortgage must describe the land covered by it with sufficient accuracy to enable one examining the record to identify the land. Ely v. Hoida, 70 M 542, 547, 226 P 525.

Effect of Actual Knowledge though Unrecorded

One who takes a mortgage upon property with actual knowledge of an earlier, though unrecorded, one, takes it subject thereto and will not be permitted, by placing his mortgage first on record, to gain priority over the earlier lien, even though the prior instrument is imperfect in itself or is defectively executed. Angus v. Mariner, 85 M 365, 373, 278 P 996.

Effect of Recording

The record of the assignment of a mortgage is notice to a purchaser from the mortgagor, so that payments by him to the assignor are at his own risk. Cornish v. Woolverton, 32 M 456, 477, 81 P 4, 108 AmStRep 598.

Where the deed under which one holds lands is of record and the grantee takes possession, such possession is referable to such deed, and a subsequent purchaser is relieved from further inquiry to ascertain whether any other or different claim is asserted. Baum v. Northern Pacific Ry. Co., 55 M 219, 222, 175 P 872.

Form of Instrument

Under this section and sections 73-202 and 39-115, a certificate of acknowledgment of a mortgage by husband and wife is not rendered insufficient to charge a subsequent purchaser with notice by reason of the fact that, in the statement that the parties "severally acknowledged—he— executed the same," the blanks before and after the word "he" were not filled so as to make the word "they." Trerise v. Bottego, 32 M 244, 247, 79 P 1057, 108 AmStrep 521.

Fraud—Constructive Notice No Defense

Second mortgagee was chargeable with constructive notice of recorded first mortgage; he was not estopped, in action for attachment, from showing that second mortgage, given in reliance upon mortgagor's misrepresentation that property

was unencumbered, was valueless. Bailey v. Hansen, 105 M 552, 561, 74 P 2d 438.

Knowledge Presumed From Record

Where, after giving an oil and gas lease upon his land to one party which lease was not recorded, the owner gave an option to purchase the land to another party subject to the lease, the option being recorded, purchaser of land before expiration of option was chargeable with constructive notice of the option and its contents and hence of the provision there in that it was subject to the lease; purchaser was not an innocent purchaser without notice and therefore not entitled to an injunction to prevent the lessee from going upon the land for the purpose of exploration. Guerin v. Sunburst Oil & Gas Co., 68 M 365, 368, 218 P 949, distinguished in 70 M 542, 549, 226 P 525.

Oral Agreements

Oral agreements affecting the title to real property, being incapable of record, are not within the express language of this section and section 73-202. Mullins v. Butte Hardware Co., 25 M 525, 538, 65 P 1004, 87 AmStRep 430.

Recording of Restrictions

Declaration of restrictions constitutes a conveyance under section 73-203, so that where residential restriction was filed with subdivision plat, it constituted constructive notice to subsequent purchaser who wanted to use land for commercial purposes. Kosel v. Stone, 146 M 218, 404 P 2d 894.

Reservation of Royalty

Where plaintiff, seeking to quiet title, held premises under quitclaim deed from prior owner, he took title subject to all prior recordations or conveyances concerning the land in question, including reservation of royalty appearing on face of prior conveyances. Pluhar v. Guderjahn, 134 M 46, 328 P 2d 129, 132.

Collateral References

Mortgages € 154(4), 171; Vendor and Purchaser € 231.

59 C.J.S. Mortgages §§ 239, 255; 92 C.J.S. Vendor and Purchaser § 334 et seq. 45 Am. Jur. 464 et seq., Records and Recording Laws, § 81 et seq.

Record of instrument which comprises or includes an interest or right that is not a proper subject of record. 3 ALR 2d 577.

Rights as between purchaser of timber under unrecorded instrument and subsequent vendee of land. 18 ALR 2d 1162.

Personal covenant in recorded deed as enforceable against grantee's lessee or successor. 23 ALR 2d 520.

Necessity that mortgage covering oil and gas lease be recorded as real estate mortgage, and/or filed or recorded as chattel mortgage. 34 ALR 2d 902.

Public records as notice of adverse possession in life tenant as against remaindermen or reversioners. 58 ALR 2d 309. Record of instrument without sufficient

acknowledgment as notice. 59 ALR 2d 1299.

Law Review

Cromwell, "The Improvement of Conveyancing in Montana—A Proposal," 22 Mont. L. Rev. 26, 32 (Fall 1960).

73-201.1. Abstract of conveyance or encumbrance. An abstract of a conveyance or encumbrance of real property, which abstract is acknowledged or proved, and certified and recorded as prescribed by law, shall have the same effect for all purposes of Title 73, chapter 2 as if the conveyance or encumbrance of real property had been acknowledged or proved, and certified and recorded as prescribed by law.

History: En. Sec. 3, Ch. 218, L. 1971.

73-202. (6935) Conveyances to be recorded, or are void, etc. Every conveyance of real property, other than a lease for a term not exceeding one year, is void against any subsequent purchaser or encumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

History: Ap. p. Sec. 260, 5th Div. Comp. Stat. 1887; re-en. Sec. 1641, Civ. C. 1895; re-en. Sec. 4684, Rev. C. 1907; re-en. Sec. 6935, R. C. M. 1921. Cal. Civ. C. Sec. 1214. Based on Field Civ. C. Sec. 530.

Definition of "Encumbrancer"

This section does not operate in favor of an attaching creditor as against a contract of sale and the assignment thereof not recorded prior to levy of the attachment, the term "encumbrancer" not being broad enough to include such creditor. Short v. Karnop, 84 M 276, 278, 275 P 278; Stauffacher v. Great Falls Public Service Co., 99 M 324, 43 P 2d 647.

Donee Not Good Faith Purchaser

Where a son receives property from his father as a gift, he cannot be considered a good faith purchaser for a valuable consideration within meaning of this section. Hughes v. Melby, 135 M 415, 340 P 2d

Effect of Recording in General

This section unequivocally makes all unrecorded deeds and conveyances, except leases for one year, void as to subsequent purchasers and encumbrancers in good faith and for a valuable consideration. Sheldon v. Powell, 31 M 249, 254, 78 P 491, 107 AmStRep 429.

Under this section it is presumed that the holder of the prior recorded title ac-quired the entire estate, unless he had, or was charged with, notice. Custer Con-

solidated Mines Co. v. City of Helena, 52 M 35, 40, 156 P 1090.

A real estate mortgage extension agreement executed under section 52-203, before maturity of the last of a series of mortgage notes, was not recorded until after the period of extension had expired. Two years prior thereto the property had been conveyed to another, subject to the mortgage, the deed, however, not being recorded until some six weeks after recorda-tion of the extension agreement. Held, in mortgage foreclosure action, that the extension agreement, having been valid and first placed of record, took priority over the deed, even assuming that the vendee was a subsequent purchaser in good faith and for a valuable consideration. Hastings v. Wise, 91 M 430, 435, 8 P 2d 636.

Estoppel To Record Gift Deed

Where the father executed a deed of a one-third interest in his ranch to his son as a gift but did not record or deliver such deed, then placed the ranch with a real estate broker with the power to sell, the broker and his purchaser could rely on the record ownership, and both the son and his father were estopped to defeat them by a recordation subsequent to the contract of purchase. Hughes v. Melby, 135 M 415, 340 P 2d 511.

General Requisites

To entitle a subsequent purchaser of real property to protection against prior conveyances under this section, he must

not only have purchased for a valuable consideration, but his conveyance must have been first duly recorded. Hastings v. Wise, 91 M 430, 435, 8 P 2d 636.

Innocent Purchaser in Good Faith

Where plaintiff in an action in unlawful detainer, before purchasing land had consulted the records and found that the then occupant was holding under an expired lease, and upon inquiry was informed by the latter that he was so holding and paying rent annually, he was a purchaser in good faith and without notice of defendant's claim as a life tenant under a letter from the owner to defendant that he could remain in possession so long as he used the premises for a certain purpose and paid the rent. Stoltze Land Co. v. Westberg, 63 M 38, 45, 206 P 407.

Where, after giving an oil and gas lease upon his land to one party which lease was not recorded, the owner gave an option to purchase the land to another party subject to the lease, the option being recorded, plaintiff who purchased the land before the expiration of the option, was chargeable with constructive notice of the option and its contents and hence of the provision therein that it was subject to the lease, and, in the absence of inquiry from the lessee, was not an innocent pur-chaser without notice and therefore not entitled to an injunction to prevent the lessee from going upon the land for the purpose of exploration. Guerin v. Sunburst Oil & Gas Co., 68 M 365, 368, 218 P 949, distinguished in 70 M 542, 549, 226 P 525.

In an action to quiet title to real property, held, that where a former owner of the property had no interest in the property at the time an attachment was levied against it by his creditor, the latter took nothing thereby as against the then owner, and his contention that under this section, since prior instruments affecting the title had not been placed of record before levy of the attachment, the title of plaintiff was subject to the attachment may not be upheld, under the above rules. Short v. Karnop, 84 M 276, 278, 275 P 278.

While an existing legal obligation, such as rests upon children to support their indigent parents to the extent of their ability, under sections 61-114 and 61-124 is a good consideration for a promise under section 13-502, "to an extent corresponding with the extent of the obligation, but no further or otherwise," that is not to say that it is such a consideration as to make defendant a purchaser in good faith and for a valuable consideration, so as to entitle him to plaintiff's property under this section. Kelly v. Grainey, 113 M 520, 534, 129 P 2d 619.

A purchaser in good faith is one who at the time of his purchase advances a new consideration, surrenders some security, or does some other act which leaves him in a worse position if his purchase should be set aside. Kelly v. Grainey, 113 M 520, 535, 129 P 2d 619.

Knowledge of Royalty Assignments in Subsequent Leaseholder

Where the holder of a federal oil and prospecting permit assigned a number of royalty interests in the lands covered by it, which assignments were duly recorded, and he thereafter transferred the permit to another who secured leases on the lands, the latter took the leases subject to and with knowledge of the assignments of royalty interests, under this recording statute. Aronow v. Bishop, 107 M 317, 325, 86 P 2d 644.

"Other Conditional Estate"

Under the rule of ejustem generis, words "other conditional estate" used in this section mean such estates of the nature previously mentioned in the statute, i.e., estates created by the owner of the property, or by assignment thereof. Short v. Karnop, 84 M 276, 278, 275 P 278.

Unrecorded Easement

In condemnation proceeding, refusal to instruct in words of statute was error where owner of adjacent land claimed compensation for unrecorded easement in condemned land. Montana State Highway Commission v. Robertson & Blossom Inc., 151 M 205, 441 P 2d 181.

Where Recording Not Substitute for Actual Notice To Change Permissive Possession to Hostile

Although the recording of deeds to supply additional security for bank loan to sister of plaintiff would have constituted such notice as would protect a bona fide purchaser for a valuable consideration whose deed had been recorded first under this section, it could not take the place of actual notice to the owner of the property, involved in a quiet title action in which the defendant, another sister of plaintiff, relied upon the doctrine of adverse possession of her grantor, that the permissive nature of the possession had been changed into a hostile one. Kelly v. Grainey, 113 M 520, 530, 129 P 2d 619.

Collateral References

Mortgages 172, 244(2); Vendor and Purchaser €== 233.

59 C.J.S. Mortgages §§ 269, 366; 92

C.J.S. Vendor and Purchaser § 345. 45 Am. Jur. 502, Records and Recording Laws, § 140 et seq.

Record of instrument which comprises or includes an interest or right that is not a proper subject of record. 3 ALR 2d 577.

Restrictive covenant omitted on deed imposed by general plan of subdivision. 4 ALR 2d 1364.

Agreement between real estate owners restricting use of property as within contemplation of recording laws. 4 ALR 2d 1419.

73-203. (6936) Conveyances defined. The term "conveyance," as used in the two preceding sections, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to real property may be affected, except wills.

History: En. Sec. 1642, Civ. C. 1895; re-en. Sec. 4685, Rev. C. 1907; re-en. Sec. 6936, R. C. M. 1921. Cal. Civ. C. Sec. 1215. Based on Field Civ. C. Sec. 531.

Compiler's Note

The phrase "two preceding sections" refers to sections 73-201 and 73-202.

Contract for Sale of Land

A contract for the sale of land is a conveyance of real property within the meaning of the law. Piccolo v. Tanaka, 78 M 445, 451, 253 P 890.

Lease

A lease directed by the district court to be executed by an executor of certain realty belonging to his testator's estate falls within the meaning of the term "conveyance" as used in this section. Estate of Tuohy, 23 M 305, 308, 58 P 722.

Mortgage

While a mortgage is a conveyance, it is a conveyance of only a chattel interest. Hull v. Diehl, 21 M 71, 78, 52 P 782; Mueller v. Renkes, 31 M 100, 103, 77 P 512; Cornish v. Woolverton, 32 M 456, 475, 81 P 4.

A mortgage on real property is a conveyance within the meaning of the Recording Acts. Angus v. Mariner, 85 M 365, 373, 278 P 996.

A real estate mortgage extension agreement, executed as provided by section 52-203, is a "conveyance" within mean-

ing of this section. Hastings v. Wise, 91 M 430, 434, 8 P 2d 636.

Purpose and Intent

The definition given to the term "conveyance" is to make plain the meaning of the provisions touching recordation, and is not designed to change the more restricted, technical meaning in which it is used in the books. Estate of Tuohy, 23 M 305, 309, 58 P 722.

Reservation of Royalty

Recordation of royalty assignment falls within definition of conveyance of real property. Pluhar v. Guderjahn, 134 M 46, 328 P 2d 129, 132.

Restrictions

Declaration of restrictions constitutes an instrument which affects title to land under this section, so that where filed, subsequent purchaser had constructive notice, pursuant to section 73-201, and could not use his land for commercial purposes. Kosel v. Stone, 146 M 218, 404 P 2d 894.

Collateral References

Mortgages = 154(4), 171, 172, 244(2); Vendor and Purchaser = 231, 233.

59 C.J.S. Mortgages §§ 239, 255, 366; 92 C.J.S. Vendor and Purchaser § 334 et seq.

Construction and application of regulations as to filing and recording of subdivision maps or plats. 11 ALR 2d 532, 542.

73-204. (6937) Powers of attorney—how revoked. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

History: En. Sec. 1643, Civ. C. 1895; 6937, R. C. M. 1921. Cal. Civ. C. Sec. re-en. Sec. 4686, Rev. C. 1907; re-en. Sec. 1216. Based on Field Civ. C. Sec. 532.

Collateral References

Principal and Agent 37; Powers 12. 2 C.J.S. Agency § 73 et seq.; 72 C.J.S. Powers § 14. 3 Am. Jur. 2d 442 et seq., Agency, § 37 et seq.; 41 Am. Jur. 876, Powers, § 97.

73-205. (6938) Unrecorded instruments valid between the parties. An unrecorded instrument is valid as between the parties and those who have notice thereof.

History: En. Sec. 1644, Civ. C. 1895; re-en. Sec. 4687, Rev. C. 1907; re-en. Sec. 6938, R. C. M. 1921, Cal. Civ. C. Sec. 1217.

Burden of Proof

The burden is on the grantee in an unrecorded deed to show that a subsequent purchaser had notice. Hull v. Diehl, 21 M 71, 76, 52 P 782; Mullins v. Butte Hardware Co., 25 M 525, 539, 65 P 1004; Sheldon v. Powell, 31 M 249, 257, 78 P 491; Custer Consolidated Mines Co. v. City of Helena, 52 M 35, 41, 156 P 1090; Zier v. Osten, 135 M 484, 342 P 2d 1076.

Grazing Lease

Though unacknowledged, unrecorded grazing lease was valid as between lessor and lessee, it was not binding on one who was not a party to the lease and who had

no notice thereof at time lessor contracted to sell him the land and who promptly entered into possession of the land and made improvements thereon, including plowing of almost 70 acres thereof; attempted recording almost nine months after contract of sale did not constitute constructive notice. Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 727.

Payment of Taxes

Payment of taxes by the grantee in an unrecorded deed is not notice to a subsequent purchaser. Sheldon v. Powell, 31 M 249, 256, 78 P 491; Hurley v. O'Neill, 31 M 595, 599, 79 P 242.

Collateral References

Deeds 2; Notice 12. 26 C.J.S. Deeds § 74; 66 C.J.S. Notice § 19 et seq.

73-206. Designation of grantee in conveyance of real estate as trustee when terms of trust not set forth-effect of. That any conveyance of real property hereafter placed of record in any office of any county clerk and recorder in which the name of the grantee is followed by the word "trustee," "as trustee," or some similar fiduciary term and in which no terms and conditions of such purported trust nor any limitation on the power of the grantee to convey shall be set forth so that any person dealing with such real property could learn therefrom what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of such property shall be considered as though such property had been conveyed to such grantee without any limitation upon his authority to reconvey or encumber as fully as though the word "trustee," "as trustee," or any equivalent fiduciary expression had not been used in connection with his name; and the use of the word "trustee" or "as trustee," or any equivalent fiduciary expression purporting a trust, contained in such conveyance shall have no force or effect in charging any purchaser or encumbrancer thereof with notice of any limitation of power on the part of the person so named as trustee to deal with such lands as

History: En. Sec. 1, Ch. 64, L. 1943.

Cross-References

Bona fide purchaser not affected by implied trust, sec. 86-104.

Notice imparted by recording of trust deed, sec. 86-406.

Purchaser without notice, protection, sec. 86-113.

73-207. Validation of conveyances recorded after defective execution. Any instrument affecting real property, which was, previous to the date

this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, not-withstanding any defect, omission, or informality in the execution of the instrument or in the certificate or acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 17, L. 1961.

Collateral References

"Marketable title," "ancient claims extinguishment," and like statutes, terminat-

ing or limiting enforcement of rights, interests, and claims respecting real property, based on old records, instruments, or events. 71 ALR 2d 846.

73-208. Validation of conveyances recorded after defective execution. Any instrument affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after the date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of any instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 63, L. 1963.

Compiler's Note

The effective date of this act was July 1, 1963.

73-209. Validation of conveyances recorded after defective execution—1965 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence

of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 58, L. 1965.

Compiler's Note

The effective date of this act was July 1, 1965.

Validation of conveyances recorded after defective execution— Any instrument affecting real property, provided no action is now pending to set such instrument aside, which was, previous to January 1, 1967, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 181, L. 1967.

73-211. Validation of conveyances recorded after defective execution—1969 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside, which was, previous to January 1, 1969, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified

copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 74, L. 1969.

73-212. Validation of conveyances recorded after defective execution— 1971 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside, which was, previous to January 1, 1971, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 99, L. 1971.



TITLE 74

SALES AND EXCHANGE

Chapter

- 1. Sale and agreements for sale, 74-101 to 74-110.
- Statutes of frauds, 74-203 (74-201, 74-202, 74-204 to 74-207 Repealed). Rights and obligations of seller—delivery and warranty, 74-301 to 74-325.
- Rights and obligations of buyer-inspection and payment, Repealed-Section 10-102, Chapter 264, Laws of 1963. Exchange, 74-501 to 74-505.
- Retail installment sales, 74-601 to 74-612.

CHAPTER 1

SALE AND AGREEMENTS FOR SALE

Section 74-101. Sale defined.

Subject of sale. 74-102.

Agreement for sale. 74-103.

74-104. Agreement to sell. 74-105. Agreement to buy.

74-106. Agreement to sell and buy.

74-107. What may be the subject of the contract.

74-108. Agreement to sell real property.

74-109. Usual common-law covenants required by such contracts, when.

74-110. Form of such covenants.

74-101. (7581) Sale defined. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

History: En. Sec. 2310, Civ. C. 1895; re-en. Sec. 5079, Rev. C. 1907; re-en. Sec. 7581, R. C. M. 1921. Cal. Civ. C. Sec. 1721. Field Civ. C. Sec. 855.

Cross-References

Application to exchanges, sec. 74-503. Auction sales, secs. 66-201 to 66-219. Uniform Commercial Code, sec. 87A-2-101 et seq.

Agreement To Sell Distinguished

Where property is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the transaction is not a sale within this section. State ex rel. Malin-Yates Co. v. Justice of Peace Court, 51 M 133, 139, 149 P 709.

A sale, as distinguished from an agreement to sell, is the actual transfer of title from the grantor to the grantee, an agreement to sell being a contract to be performed in the future which, if fulfilled, results in a sale. Franzke v. Fergus County, 76 M 150, 153, 245 P 962.

Collateral References

Sales@m1-3. 77 C.J.S. Sales §§ 1-3. 46 Am. Jur. 194, Sales, § 2.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 11, 92 (Fall 1959).

74-102. (7582) Subject of sale. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

History: En. Sec. 2311, Civ. C. 1895; re-en. Sec. 5080, Rev. C. 1907; re-en. Sec. 7582, R. C. M. 1921. Cal. Civ. C. Sec. 1722. Field Civ. C. Sec. 856.

Collateral References

Sales@=9-14. 77 C.J.S. Sales §§ 13, 16, 17. 74-103. (7583) Agreement for sale. An agreement for sale is either:

- 1. An agreement to sell;
- 2. An agreement to buy; or,
- 3. A mutual agreement to sell and buy.

History: En. Sec. 2320, Civ. C. 1895; re-en. Sec. 5081, Rev. C. 1907; re-en. Sec. 7583, R. C. M. 1921. Cal. Civ. C. Sec. 1726. Field Civ. C. Sec. 857.

Collateral References Sales@1, 24, 25. 77 C.J.S. Sales §§ 1, 33.

74-104. (7584) Agreement to sell. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

History: En. Sec. 2321, Civ. C. 1895; re-en. Sec. 5082, Rev. C. 1907; re-en. Sec. 7584, R. C. M. 1921, Cal. Civ. C. Sec. 1727. Field Civ. C. Sec. 858.

Passage of Title

A seller ordinarily may not sue for the purchase price of the property until title has passed to the buyer. The actual passing of a title, as between the parties to a contract of sale of personal property, depends upon the intention of the parties. DeMers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

Sale Distinguished

Where personalty is sold under a contract providing that title remain in the

seller until the purchase price is paid, the transaction is a mere executory agreement of sale, accompanied by the delivery of possession to the intending purchaser to be held by him pending payment of the purchase price, and title remains in the vendor until payment has been made. State ex rel. Malin-Yates Co. v. Justice of Peace Court, 51 M 133, 138, 149 P 709. A sale, as distinguished from an agree-

A sale, as distinguished from an agreement to sell, is the actual transfer of title from the grantor to the grantee, an agreement to sell being a contract to be performed in the future which, if fulfilled, results in a sale. Franzke v. Fergus County, 76 M 150, 153, 245 P 962.

74-105. (7585) Agreement to buy. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

History: En. Sec. 2322, Civ. C. 1895; re-en. Sec. 5083, Rev. C. 1907; re-en. Sec. 7585, R. C. M. 1921. Cal. Civ. C. Sec. 1728. Field Civ. C. Sec. 859.

When Contract of Sale Not Mere Option

The vendee, in an action to recover the balance due on the purchase price, may not contend that the contract of purchase

and sale was merely an option in the face of a provision that the vendor has agreed "and does hereby agree" to sell, and the vendee "agrees to purchase from the vendor" the property described, and that the consideration, naming it, shall be paid to the vendor "at the times and in the manner following." Petitt v. F. V. H. Collins Co., 112 M 12, 17, 113 P 2d 340.

74-106. (7586) Agreement to sell and buy. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

History: En. Sec. 2323, Civ. C. 1895; re-en. Sec. 5084, Rev. C. 1907; re-en. Sec. 7586, R. C. M. 1921. Cal. Civ. C. Sec. 1729. Field Civ. C. Sec. 860.

Option To Purchase

This section was not applicable to transaction based on instrument clearly granting to purchaser an option only, where purchaser did not obligate himself to ac-

cept title to property or to pay a price therefor. Northern Mining Corp. v. Cooke Mining Co., 123 F 2d 9, 13.

Sale Distinguished

An agreement to sell and buy is preliminary to a sale, resulting in a sale only if the terms thereof are fulfilled. Wright Land & Investment Co. v. Even, 57 M 1, 186 P 681.

A sale, as distinguished from an agreement to sell, is the actual transfer of title from the grantor to the grantee, an agreement to sell being a contract to be performed in the future which, if fulfilled, results in a sale. Franzke v. Fergus County, 76 M 150, 153, 245 P 962.

An agreement to sell is a contract to be performed in the future; it is preliminary to a sale and not a sale; hence where the owner of an oil and gas lease agreed to sell it on condition that upon default in

making deferred payments the owner should have the right to take possession of the premises, and default was made and the agreement canceled, a finding of the court in a mechanics' foreclosure suit that the defaulting purchaser was the owner of the leasehold was error. Callender v. Crossfield Oil Syndicate, 84 M 263, 271, 275 P 273, overruled on other grounds in Pioneer Engineering Works, Inc. v. McConnell, 113 M 397, 130 P 2d 685.

74-107. (7587) What may be the subject of the contract. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

History: En. Sec. 2324, Civ. C. 1895; re-en. Sec. 5085, Rev. C. 1907; re-en. Sec. 7587, R. C. M. 1921. Cal. Civ. C. Sec. 1730. Field Civ. C. Sec. 861.

Collateral References

Sales \$9-14.
77 C.J.S. Sales \$13.
46 Am. Jur. 215, Sales, \$ 20.

74-108. (7588) Agreement to sell real property. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

History: En. Sec. 2325, Civ. C. 1895; re-en. Sec. 5086, Rev. C. 1907; re-en. Sec. 7588, R. C. M. 1921. Cal. Civ. C. Sec. 1731. Based on Field Civ. C. Sec. 862.

Cross-Reference

Lien of seller of real property, secs. 45-1101 to 45-1103.

Collateral References

Vendor and Purchaser € 129 et seq., 149-54.

92 C.J.S. Vendor and Purchaser §§ 184 et seq., 234, 235.

55 Am. Jur. 619, Vendor and Purchaser, § 149.

74-109. (7589) Usual common-law covenants required by such contracts, when. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seizin," "quiet enjoyment," "further assurance," "general warranty," and "against encumbrances."

History: En. Sec. 2326, Civ. C. 1895; re-en. Sec. 5087, Rev. C. 1907; re-en. Sec. 7589, R. C. M. 1921. Cal. Civ. C. Sec. 1733. Field Civ. C. Sec. 863.

Covenant of Warranty

Where a deed to real property purports to convey the realty itself and not merely the grantor's right, title and interest in

it, the covenant of warranty that "the grantor hereby covenants that he will forever warrant and defend" the grantee's "right, title and interest in and to the said premises * * * against all and every person," etc., is one of general warranty and quiet enjoyment. Green v. Baker, 66 M 568, 575, 214 P 88.

74-110. (7590) Form of such covenants. The covenants mentioned in the last section must be in substance as follows:

"The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the

expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

History: En. Sec. 2327, Civ. C. 1895; re-en. Sec. 5088, Rev. C. 1907; re-en. Sec. 7590, R. C. M. 1921. Cal. Civ. C. Sec. 1734. Field Civ. C. Sec. 864.

Cross-References

Covenants implied from words of grant, sec. 67-1616.

Damages for breach of covenant, secs. 17-304, 17-305.

Land sold by married person, false pretenses, sec. 94-1808.

Sale of land twice, penalty, sec. 94-1807.

CHAPTER 2

STATUTES OF FRAUDS

Section 74-201. Repealed. 74-202. Repealed.

74-203. Contract for sale of real property.

74-204 to 74-207. Repealed.

74-201, 74-202. (7591, 7592) Repealed—Chapter 264, Laws of 1963.

Sections 74-201 and 74-202 (Secs. 2340, 2341, Civ. C. 1895), statutes of frauds relating to contracts for sales of personal property and agreements to manufacture, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

DECISIONS UNDER FORMER LAW

Burden of Proof

Where value of property involved in sale was sufficient to bring contract of sale within this section, burden was on plaintiff, in action for breach of contract, to establish by a preponderance of evidence that a valid contract under the statutes was entered into between the parties, together with a breach of such contract, and the consequent damages. Brophy v. Idaho Produce & Provision Co., 31 M 279, 283, 78 P 493.

Operation in General

Where a person left a message with a clerk that if plaintiff would buy in certain property to be sold under a chattel mortgage and let a certain person buy it from him, he would pay plaintiff five hundred dollars, and plaintiff acted accordingly, the transaction was not within the statute of frauds, and constituted a valid verbal contract. Frank v. Murray, 7 M 4, 10, 14 P 654.

A contract between tenants in common for the erection of a house on the common property by one at his own expense, and requiring him to make an equal division of the rents between them when the rents received equaled one-half the cost, was not within section. Ayotte v. Na-

deau, 32 M 498, 519, 81 P 145.

Part Payment

Part payment of the purchase price upon a contract for the sale of cattle brought the transaction within exception permitting unwritten contracts. Case v. Kramer, 34 M 142, 149, 85 P 878.

When acceptance and receipt of a part of goods or payment of a portion of the purchase price at the time of the sale by an agent of the buyer is relied upon to take the case out of the statute of frauds, it must be by one having specific authority or by a general agent having all authority, and the authority of the former cannot depend upon the same oral agreement which is sought to be rendered valid

by the act of the agent. Mahoney Bros. v. Hansen Packing Co., 67 M 120, 215 P 506. In an action for breach of contract of sale of cattle where defendant company was sought to be held liable under an arrangement made over the telephone by a third person who had never been its agent and was not specifically authorized by it to act for it, and who after completion of the conversation assured the buyer that defendant would take the cattle and thereupon paid a part of the purchase price, defendant never making any payment whatever, held that the payment was not made by the buyer and therefore the case was not taken out of the statute of frauds by such part payment. Mahoney Bros. v. Hansen Packing Co., 67 M 120, 215 P 506.

Receipt or Acceptance of Goods

Where the goods are already in the buyer's possession under a written lease, such possession is not such a receipt as removes transaction from statute of frauds absent an affirmative act by the seller assenting to such receipt by the buyer. West River Equipment Co. v. Holzworth Constr. Co., 134 M 582, 335 P 2d 298.

Receipt or Acceptance of Part of Thing Sold

The receipt and acceptance of property sold need not be concurrent with the time of sale, but may occur at any time thereafter. Where the buyer accepts and receives the thing sold, such acceptance and receipt by one who assumes the buyer's contract is sufficient. Slater Brick Co. v. Shackleton, 30 M 390, 392, 76 P 805.

Sufficiency of Note or Memorandum

In order to take an oral contract for the sale of personal property out of the statute of frauds, the note or memorandum thereof referred to in this section must be so drawn that the essentials of the contract may be ascertained without resort to oral evidence, the rule being complied with if the material elements of the contract are stated in general terms. Lewis v. Aronow, 77 M 348, 355, 251 P 146.

For the purpose of enabling the court to interpret the abbreviations "No. 1 D. N. S." used in a memorandum evidencing the sale of wheat, parol evidence was admissible to show their customary meaning in the business of dealing in wheat. Lewis v. Aronow, 77 M 348, 355, 251 P 146.

74-203. (7593) Contract for sale of real property. No agreement for the sale of real property, or of any interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

History: En. Sec. 2342, Civ. C. 1895; re-en. Sec. 5091, Rev. C. 1907; re-en. Sec. 7593, R. C. M. 1921, Cal. Civ. C. Sec. 1741. Based on Field Civ. C. Sec. 867.

Cross-Reference

Contracts required to be in writing, secs. 13-606, 93-1401-7, 93-1401-8.

Claim in Opposition to Written Title— Burden of Proof

Where it is sought to found a claim, as for a right of way, to a part of a ranch based upon oral negotiations, and the owner is dead, this section furnishes to the heirs their only defense; if there was, in fact, an agreement to convey the right of way, the owner's death would not necessarily defeat a right to specific performance, but to authorize this the terms of the contract must be definite and full, and be made out by clear and unambiguous proof. Lewis v. Patton, 42 M 528, 533, 113 P 745.

Where a party asserts a claim to realty in opposition to the written title, he has the burden of proof, and the evidence in support of it must be clear, full and satisfactory, nothing being left to conjecture or speculation. MacGinniss Realty Co. v. Hinderager, 63 M 172, 206 P 436.

Complaint—Allegation of Writing

Although a contract to be valid must be in writing, that fact is a matter of proof

and need not be alleged in the pleading. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 706.

Complaint—Essentials of Agreement

Where complaint showed on its face that memorandum of agreement did not contain all essentials of agreement and such essentials could not be ascertained without resort to oral evidence, demurrer to complaint was properly sustained. Dineen v. Sullivan, 123 M 195, 213 P 2d 241.

Memorandum

The memorandum must contain all the essentials of the contract but if the material elements are stated in general terms all the details or particulars need not be stated. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 707.

An endorsed bank check with additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. Lewis v. Peterson, 127 M 474, 267 P 2d 127, 128.

Operation in General

An oral agreement by a purchaser at a judicial sale of a lode mining claim to take the deed in his own name and convey to another was void under this section. Largey v. Leggat, 30 M 148, 157, 75 P 950.

A contract between tenants in common for the erection of a house on the common property by one at his own expense, and requiring him to make an equal division of the rents between them when the rents received equaled one-half the cost did not come within this section. Ayotte v. Nadeau, 32 M 498, 519, 81 P 145.

Where plaintiff sought to recover money on a demand loan, defendant was properly allowed to introduce testimony tending to show that the money paid him by the former was not a loan, but a partial payment upon the purchase price of real property sold under an oral contract, even though such contract of purchase was invalid, and therefore unenforceable, under the statute of frauds. Perkins v. Allnut, 47 M 13, 14, 130 P 1.

Where it appears, in an action of ejectment, that monuments, on the boundary between adjoining properties, are in place and have been identified by the witnesses for the plaintiff, thus making certain that which can be made certain, in conformity with section 49-130, and showing that there was no dispute as to the true dividing line, no valid agreement between the parties establishing the dividing line could have been made without a complete observance of the statute of frauds, as expressed in this section. Myrick v. Peet, 56 M 13, 26, 180 P 574.

A life estate in real property (or a joint tenancy with the right of survivorship) can only be created by deed or will, under the statute of frauds; therefore the contention of the grantee in a deed which reserved no such estate in the grantor that it was orally understood between the parties that the instrument should have that effect is not maintainable. Hayes v. Moffatt, 83 M 214, 228, 271 P 433.

Oral Agreement Being Performed

Where two persons had entered into a joint adventure for the purchase of ranch lands, in suit by one party for dissolution of the partnership and an accounting, contention of defendant that purchase of certain additional land, if part of agreement to purchase for benefit of partnership, was void because not in writing was not a defense, because both parties had performed and were performing their part of oral agreement to buy ranch properties. Ivins v. Hardy, 123 M 513, 217 P 2d 204, 206.

Part Performance

Specific performance of an oral contract to sell real property could be granted where plaintiff had fully performed all the terms of the agreement to be performed by him and defendant had put him in actual possession of the premises, upon which he had erected substantial im-

provements. Stevens v. Trafton, 36 M 520, 528, 93 P 810.

A parol agreement for the sale or exchange of real property may be specifically enforced in case of part performance, and where the vendee takes possession and makes valuable improvements, there is sufficient part performance to take the case out of the statute of frauds. Hogan v. Thrasher, 72 M 318, 327, 233 P 607.

For possession by the vendee to constitute part performance of a parol agreement to sell or exchange land, such possession must be in pursuance of the agreement and not merely a continuance of a former possession; but where possession is followed by the making of valuable and permanent improvements, it is referable to the new relation created by the contract, rather than the old one. Hogan v. Thrasher, 72 M 318, 327, 233 P 607.

"Party To Be Charged"

The "party to be charged" means the party to be charged in the particular suit. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 707.

Presumption of Written Contract

The law will presume that a contract was in writing in the absence of any statement to the contrary. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 706.

Rights of Way of Necessity

There can be implied grants or reservations of rights of way of necessity in Montana. Thisted v. Country Club Tower Corp., 146 M 87, 103, 405 P 2d 432, overruling Simonson v. McDonald, 131 M 494, 311 P 2d 982, 984.

Settler May Convey Rights in Public Lands Orally

A settler upon public lands of the United States may convey his right therein, with water rights appurtenant thereto, orally, with or without consideration, to one who thereupon takes immediate possession thereof. Geary v. Harper, 92 M 242, 248, 12 P 2d 276.

Statute of Frauds Must Be Pleaded

Where a defendant, in a suit for specific performance, admitted the making of the contract and relied on other defenses than the statute of frauds to defeat the action, he could not avail himself of this section without specially pleading it. Christiansen v. Aldrich, 30 M 446, 453, 76 P 1007; Mitchell v. Henderson, 37 M 515, 520, 97 P 942.

Sufficiency of Memorandum

The note or memorandum necessary to meet the requirements of this section may consist of several writings, and it is sufficient if it contains all the essentials of the contract, although they are stated in general terms. Hughes v. Melby, 135 M 415, 340 P 2d 511.

Collateral References

Frauds, Statute of 55-80; Specific Performance 40-47.

37 C.J.S. Frauds, Statute of § 68 et seq.; 81 C.J.S. Specific Performance §§ 52-61.

49 Am. Jur. 53, Specific Performance, § 40; 49 Am. Jur. 488, Statute of Frauds, § 149 et seq.

Signing of contract by agent of undisclosed principal as satisfying statute of frauds. 23 ALR 932 and 138 ALR 330.

Necessity of written authority to enable agent to make contract within statute of

frauds. 27 ALR 606.

Name of principal or of authorized agent, in body of instrument, as satisfying statute of frauds where transaction was not conducted by him. 28 ALR 1114.

Agreement to release, discharge, or assign real estate mortgage as within stat-

ute of frauds. 32 ALR 874.

Sufficiency of writing under statutes requiring agreements for the payment of commission, or authorizing or employing a broker for the sale or purchase of real estate for compensation or commission, or a memorandum thereof, to be in writing. 80 ALR 1456.

Undelivered deed or escrow pursuant to

oral contract, as satisfying statute of frauds. 100 ALR 196. Parol lease for term of a year to com-

Parol lease for term of a year to commence in future as within statute of frauds. 111 ALR 1465.

Place of signature on memorandum to satisfy statute of frauds. 112 ALR 937.

Part performance to take oral contract of lease out of statute of frauds predicated upon acts or conduct of one in possession of the property under another contract or right. 125 ALR 1468.

Parol partition and the statute of frauds.

133 ALR 476.

Description in memorandum defective or silent as to boundary line of land retained by seller as sufficient to satisfy statute of frauds. 139 ALR 965.

Memorandum which will satisfy statute of frauds, as predicable in whole or part upon writings prior to oral agreement.

1 ALR 2d 841.

Restrictions on use of real property by oral agreement. 5 ALR 2d 1316.

Acceptance: oral acceptance of written order by party sought to be charged as satisfying statute of frauds. 30 ALR 2d 972.

Erasure: effect of attempted cancellation or erasure in memorandum otherwise sufficient to satisfy statute of frauds. 31 ALR 2d 1112.

Price fixed in contract violating statute of frauds as evidence of value in action in quantum meruit. 21 ALR 3d 9.

74-204 to 74-207. (7594 to 7597) Repealed—Chapter 264, Laws of 1963.

Repeal

Sections 74-204 to 74-207 (Secs. 1 to 3, p. 124, L. 1899; Sec. 1, Ch. 52, L. 1911; Sec. 1, Ch. 146, L. 1919; Sec. 1, Ch. 145, L. 1925; Sec. 1, Ch. 112, L. 1935; Secs.

1 to 3, Ch. 70, L. 1943), relating to contracts for the sale of personal property with title retained by the vendor, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

DECISIONS UNDER FORMER LAW

Assignment of Chattel Mortgage

Where a chattel mortgage, executed by a conditional sale purchaser, was filed for record prior to recordation of the contract, it was as valid in the hands of the assignee of the mortgage as it was in those of the bona fide mortgagee for value and without notice, even though the assignee may have had actual notice of the existence of the conditional contract of sale at the time of the assignment. Hoeller v. Moog, 60 M 74, 80, 81, 198 P 367.

Attachment

When personalty had been levied upon before a conditional sale contract covering it was filed in the office of the county clerk and recorder, it was impressed with the lien which continued in full force and effect until judgment, nothing in the meantime transpiring to destroy it, render-

ing the contract void as to attaching creditor. Billings Hardware Co. v. Bryan, 63 M 14, 20, 206 P 418.

Construction of Contract

A contract for the sale of an article wherein it was stipulated that title should remain in the vendor until the purchase price was paid, construed as a conditional sale contract under this section, and held not susceptible of construction as one of bailment. Hodson v. O'Keefe, 71 M 322, 329, 229 P 722.

Farm Machinery

Where conditional sale contracts were not filed with the county clerk as required by this section, they were void as to bona fide purchasers, mortgagees or attaching creditors. Yale Oil Corp. v. Sadlacek, 99 M 411, 417, 43 P 2d 887.

Filing of Assignment Not Constructive Notice

Since section provided only for the filing of conditional sale contracts, and not for the filing of assignments thereof, filing of the latter did not impart constructive notice, and proof of the assignment offered for the purpose of showing such notice in the buyer of the article covered by the contract was properly excluded. Parsons v. Rice, 81 M 509, 525, 264 P 396.

Filing of Chattel Mortgages

A conditional sale contract of mortgaged personal property made after the due filing of the mortgage—though valid as between the parties to it—was void as against the mortgagee, and the writing evidencing the sale was inadmissible in conversion action against seller who retook the property on breach by buyer. Doering v. Selby, 75 M 416, 420, 244 P 485.

Under former section, a conditional sale contract reserving title in vendor until full payment of purchase price, was void as to bona fide purchasers, mortgagees or attaching creditors, if it or a properly certified copy thereof was not filed for record with the county clerk prior to the time they became such. Herd v. Freeman, 84 M 32, 37, 273 P 1047.

In action in claim and delivery by seller of personal property under a conditional sale contract, which property was subsequently mortgaged by the buyer to defendants and by them bought in at foreclosure sale, defendant mortgages were entitled to prevail where at the time they took their mortgage the sale contract had not been filed for record and they were ignorant of its existence. Herd v. Freeman, 84 M 32, 37, 273 P 1047.

Finance Company Not Liable as Registered Owner

A finance corporation to which automobile dealer had assigned a conditional sale contract covering a truck which, in colliding with a car parked on the highway, caused injuries to plaintiff, held not liable in damages on the theory advanced that it being the registered owner of the offending truck, liability followed. Coombes v. Letcher, 104 M 371, 379, 66 P 2d 769.

Mortgagee Not Bona Fide Purchaser, When

In action for conversion of machinery covered by conditional sale contracts by one who knew that the contracts existed and that the seller retained title until full payment was made but nevertheless took mortgages thereon, evidence held to sustain finding that plaintiff was not a bona fide mortgagee, and therefore not entitled to recover against the seller of the ma-

chinery which had been seized and disposed of at the time plaintiff acquired its mortgages. Yale Oil Corp. v. Sedlacek,

99 M 411, 418, 43 P 2d 887.

While a pre-existing debt constituted a valuable consideration for a sale or a chattel mortgage, it was not such a consideration as would support claim of a mortgagee that he was a bona fide purchaser within meaning of section, unless creditor had granted an extension of time for payment of such a debt, or had in some way altered his condition for the worse. Yale Oil Corp. v. Sedlacek, 99 M 411, 418, 43 P 2d 887.

Mortgagees who had constructive notice of facts impeaching mortgagor's title and right to mortgage branded cattle covered by conditional sales contract were not "bona fide mortgagees" within meaning of section. Merrion v. Humphreys, 119

M 495, 176 P 2d 665, 669.

Repossession of Property

A provision in a promissory note (treated as a conditional sale contract) that upon breach by the maker the payee might treat the sale of the chattels (automobiles) as absolute, retake and sell them, applying the net proceeds upon the note, and if such proceeds were insufficient to discharge the debt, the maker to pay the deficiency, might properly be enforced under former section and did not contravene public policy. First Nat. Bank v. Marlowe, 71 M 461, 468, 230 P 374.

The remedy provided by section declaring that when 33½ per cent of the sale price of personal property sold conditionally has been paid and the vendor retakes and sells it, the contract should be deemed fully performed, was available only to the vendee and not to the vendor or an absolute guarantor. General Finance Co. v. Powell, 114 M 473, 480, 138 P 2d 255.

Where conditional sales contract secured payment of note there could be no recovery on the note after property was retaken. Johnson v. Sanderson, 132 M 451, 318 P 2d 248, 250.

When Unfiled Contract Admissible in Evidence

Where defendant in a claim and delivery action claimed as a bona fide purchaser, an unfiled conditional sale contract covering the article was void as to him and was inadmissible in evidence against him; but where his answer was a general denial and at the time it was offered in evidence there was nothing to show the nature of defendant's claim it was admissible, subject to be stricken upon undisputed testimony that defendant was a bona fide purchaser. Harvey E. Mack Co. v. Ryan, 80 M 524, 532, 261 P 283.

Where Contract Must Be Filed

Conditional sale contract was to be filed in county in which property was located at time of execution of contract,

and not in a vendee's home county to which it was immediately removed, kept and used. Fergus Motor Co. v. Soren-son, 73 M 122, 125, 235 P 422.

CHAPTER 3

RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

Section 74-301. When a seller must act as a depositary.

74-302. When seller may resell. 74-303. Delivery on demand. 74-304. Delivery-where made. 74-305.

Expense of transportation. Notice of election as to delivery. 74-306.

74-307. Buyer's directions as to manner of sending thing sold.

74-308. Delivery to be within reasonable hours.

Warranty defined. 74-309.

No implied warranty in mere contract of sale. Warranty of title to personal property. Warranty on sale by sample. 74-310.

74-311.

74-312.

74-313. When seller knows that buyer relies on his statements, etc.

74-314.

Merchandise not in existence. Manufacturer's warranty against latent defects. 74-315.

74-316. Thing bought for particular purpose.

74-317. When thing cannot be examined by buyer. 74-318. Trade-marks.

74-318.

74-319. Other marks.

74-320. Warranty on sale of written instrument.

74-321. Repealed.

74-322. Warranty on sale of good will. Warranty upon judicial sale. Effect of general warranty. 74-323. 74-324.

74-325. Uniform Commercial Code—applicability.

74-301. (7598) When a seller must act as a depositary. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

History: En. Sec. 2350, Civ. C. 1895; re-en. Sec. 5095, Rev. C. 1907; re-en. Sec. 7598, R. C. M. 1921. Cal. Civ. C. Sec. 1748. Field Civ. C. Sec. 869.

Cross-References

Attachment of property covered by conditional sales contract, sec. 93-4338.

Recovery of livestock, sec. 93-4344. Uniform Commercial Code, sec. 87A-2-101 et seq.

Collateral References

Sales@217. 77 C.J.S. Sales § 279 et seq.

74-302. (7599) When seller may resell. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the chapter

History: En. Sec. 2351, Civ. C. 1895; re-en. Sec. 5096, Rev. C. 1907; re-en. Sec. 7599, R. C. M. 1921. Cal. Civ. C. Sec. 1749. Field Civ. C. Sec. 870.

Operation and Effect

This section applies only where the

possession of the property is retained throughout by the vendor; it had no application where possession was immediately delivered to the vendee. First Nat. Bank v. Marlowe, 71 M 461, 468, 230 P

Collateral References

Sales ≈ 99, 305-315, 332.
77 C.J.S. Sales § 99; 78 C.J.S. Sales § 390, 402, 426.
46 Am. Jur. 710 et seq., Sales, § 566 et

Seller's right to retain down payment on buyer's unjustified refusal to accept goods. 11 ALR 2d 701.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 15 (Fall 1959).

74-303. (7600) Delivery on demand. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

History: En. Sec. 2360, Civ. C. 1895; re-en. Sec. 5097, Rev. C. 1907; re-en. Sec. 7600, R. C. M. 1921. Cal. Civ. C. Sec. 1753. Field Civ. C. Sec. 871.

Action To Compel Delivery

As a general rule, a proceeding to compel a corporation to deliver a certificate of stock, or an action for damages for failure to make delivery, cannot be maintained unless the corporation has refused delivery. Gallatin County Farmers' Alliance v. Flannery, 59 M 534, 538, 197 P 996.

Collateral References

Sales 5150 et seq.
77 C.J.S. Sales § 132 et seq.
46 Am. Jur. 376 et seq., Sales, § 196 et seq.

What amounts to acknowledgment by third person that he holds goods on buyer's behalf within statutory provision respecting delivery when goods are in possession of third person. 4 ALR 2d 213.

Allegation of buyer's ability and will-

Allegation of buyer's ability and willingness to perform, in action for damages for failure to deliver goods purchased. 94 ALR 2d 1215.

74-304. (7601) Delivery—where made. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

History: En. Sec. 2361, Civ. C. 1895; re-en. Sec. 5098, Rev. C. 1907; re-en. Sec. 7601, R. C. M. 1921. Cal. Civ. C. Sec. 1754. Field Civ. C. Sec. 872.

Operation and Effect

Where an automobile dealer has no ostensible place of business other than the garage in which his machines are kept, and he sells and transfers the possession of a machine at such garage, that place, in the absence of any agreement to the contrary, becomes the place of business in contemplation of law, and a redelivery at

the garage by the buyer, with notice to the seller that the machine is there, constitutes a restoration. Stanhope v. Shambow, 54 M 360, 363, 364, 170 P 752.

Collateral References

Sales \$ 79.
77 C.J.S. Sales \$ 143 et seq.
46 Am. Jur. 345, Sales, \$ 169.

Theft: upon whom loss for theft or the like falls, where seller turns over goods at buyer's premises. 50 ALR 2d 330.

74-305. (7602) Expense of transportation. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

History: En. Sec. 2362, Civ. C. 1895; re-en. Sec. 5099, Rev. C. 1907; re-en. Sec. 7602, R. C. M. 1921, Cal. Civ. C. Sec. 1755. Field Civ. C. Sec. 873.

Collateral References Sales@~74-78. 77 C.J.S. Sales § 75.

74-306. (7603) Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of de-

livery, he must give the other party reasonable notice of his choice; and if he does not give notice within a reasonable time, his right of option is waived.

History: En. Sec. 2363, Civ. C. 1895; re-en. Sec. 5100, Rev. C. 1907; re-en. Sec. 7603, R. C. M. 1921. Cal. Civ. C. Sec. 1756. Field Civ. C. Sec. 874.

Collateral References Sales 579, 81, 83. 77 C.J.S. Sales §§ 143, 147, 154 et seq.

74-307. (7604) Buyer's directions as to manner of sending thing sold. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of buyer.

History: En. Sec. 2364, Civ. C. 1895; re-en. Sec. 5101, Rev. C. 1907; re-en. Sec. 7604, R. C. M. 1921, Cal. Civ. C. Sec. 1757. Field Civ. C. Sec. 875.

Collateral References Sales©=83, 201. 77 C.J.S. Sales §§ 154, 255.

74-308. (7605) Delivery to be within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

History: En. Sec. 2365, Civ. C. 1895; re-en. Sec. 5102, Rev. C. 1907; re-en. Sec. 7605, R. C. M. 1921. Cal. Civ. C. Sec. 1758. Field Civ. C. Sec. 876.

Collateral References Sales \$\infty\$81. 77 C.J.S. Sales \\$ 147.

74-309. (7606) Warranty defined. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

History: En. Sec. 2370, Civ. C. 1895; re-en. Sec. 5103, Rev. C. 1907; re-en. Sec. 7606, R. C. M. 1921. Cal. Civ. C. Sec. 1763. Field Civ. C. Sec. 877.

Cross-Reference

Animals with false pedigree, penalty, sec. 94-1814.

Character of Contract

Where the character of a contract is at issue, to wit, whether it was one of sale, sale with warranty, or agency, the primary test is the intention of the parties gathered from the whole scope and effect of the language employed. Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325.

Election of Remedies

On breach of warranty, the buyer may either retain the article and sue for damages, or rescind the contract and sue for a return of the purchase price paid. Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325.

Privity of Contract

Remote vendee, having no contractual relationship with defendant rubber boot

manufacturer, did not state a claim for breach of warranty where there was no showing of privity of contract between the defendant and the remote vendee. Larson v. United States Rubber Co., 163 F Supp 327, 328, 330.

Secondhand Article

The fact that an article sold is secondhand and known to be such does not of itself prevent an affirmation as to its condition constituting an express warranty. Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325.

Collateral References

Sales \$\infty 246.
77 C.J.S. Sales § 301.
46 Am. Jur. 482 et seq., Sales, § 299 et

Secondhand article, sale of, implied warranty of quality, condition, or fitness. 151 ALR 446.

Assignability of warranty of goods and chattels. 17 ALR 2d 1196.

Question of law or fact, whether oral statements amount to express warranty as. 67 ALR 2d 619.

Construction and effect of affirmative provision in contract of sale by which purchaser agrees to take article "as is," in the condition in which it is, or equivalent term. 24 ALR 3d 465.

DECISIONS UNDER FORMER LAW

Rescission for Breach of Warranty

Under former section 74-403 (now repealed) providing that breach of warranty entitles buyer to rescind agreement for sale, but not executed sale unless warranty was intended to operate as a

condition, contract which had been fully executed by delivery to purchaser and his receipt or acceptance could not be rescinded. Rickards v. Aultman & Taylor Machinery Co., 64 M 394, 399, 210 P 82.

74-310. (7607) No implied warranty in mere contract of sale. Except as prescribed by this chapter, a mere contract of sale or agreement to sell does not imply a warranty.

History: En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R. C. M. 1921. Cal. Civ. C. Sec. 1764. Field Civ. C. Sec. 878.

Burden of Proof

Where breach of warranty of a piece of machinery for a certain purpose is relied upon, in an action to recover its purchase price, the burden of showing unfitness resting upon defendant is not sustained by evidence that upon a test it did poor work, unless it is also shown that the adjustment and operation were correct at the time of the test. Jones v. Armstrong, 50 M 168, 176, 145 P 949.

Implied Warranty of Fitness for Use

While the general rule in most jurisdictions is that the seller of merchandise makes an implied warranty of its fitness for the use for which it is purchased, the rule in Montana is that there is no such warranty under this section, except where the seller is the manufacturer of something to be consumed as food, and in cases where the buyer is not accorded an opportunity to examine the article bought. (See 74-316

and 74-317). Under this rule seller of defective douche, not having manufactured the article, and plaintiff and seller having had equal opportunity to discover alleged defects, there was no implied warranty. Harrington v. Montgomery Drug Co., 111 M 564, 566, 111 P 2d 808.

Secondhand Article

One knowingly buying a secondhand article from a person not a dealer or manufacturer, relying upon his own judgment, takes it unaccompanied by an implied warranty as to its fitness for a special purpose. Jones v. Armstrong, 50 M 168, 176, 145 P 949.

Collateral References

Sales \$\sim 262\frac{1}{2}.
77 C.J.S. Sales § 314.
46 Am. Jur. 513 et seq., Sales, § 332 et seq.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

74-311. (7608) Warranty of title to personal property. One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unencumbered title thereto.

History: En. Sec. 2372, Civ. C. 1895; re-en. Sec. 5105, Rev. C. 1907; re-en. Sec. 7608, R. C. M. 1921. Cal. Civ. C. Sec. 1765. Field Civ. C. Sec. 879.

Cross-Reference

Bona fide purchaser protected, sec. 67-1705.

Guaranty To Deliver

An endorsement on a bill of sale by the buyer of personal property on a resale thereof that he would "guarantee delivery of same" did not constitute a warranty of title, Pincus v. Muntzer, 34 M 498, 501, 87 P 612.

Where the transfer of personal property was evidenced by a bill of sale, to which the purchaser, upon reselling the goods, added an endorsement guaranteeing delivery, but not expressly warranting title, the language of this section may not be read into the endorsement, and thereby a written warranty created so as to make the statutory limitation of eight years, mentioned in section 93-2603, applicable to a suit for a breach of a warranty of title to the property sold. Pincus v. Muntzer, 34 M 498, 501, 87 P 612.

Possession of Property by Buyer

In this country it is the general rule that, so long as the buyer of personal property is in the undisturbed possession of it, he cannot recover damages for a breach of warranty of title or set up want of title in the seller as defense to an ac-

tion to recover the purchase price. Courtney v. Gordon, 74 M 408, 415, 241 P 233.

Collateral References

Sales \$\infty 263.
77 C.J.S. Sales \\$ 333.
46 Am. Jur. 574-580, Sales, \\$\\$ 403-409.

74-312. (7609) Warranty on sale by sample. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

History: En. Sec. 2373, Civ. C. 1895; re-en. Sec. 5106, Rev. C. 1907; re-en. Sec. 7609, R. C. M. 1921. Cal. Civ. C. Sec. 1766. Field Civ. C. Sec. 880.

Collateral References Sales \$\infty 271.

77 C.J.S. Sales § 318. 46 Am. Jur. 546-555, Sales, §§ 362-374.

What amounts to a "sale by sample" as regards implied warranties. 12 ALR 2d 524

74-313. (7610) When seller knows that buyer relies on his statements, etc. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

History: En. Sec. 2374, Civ. C. 1895; re-en. Sec. 5107, Rev. C. 1907; re-en. Sec. 7610, R. C. M. 1921, Cal. Civ. C. Sec. 1767. Field Civ. C. Sec. 881.

Collateral References Sales ⇒ 268. 77 C.J.S. Sales § 312. 46 Am. Jur. 539, Sales, § 353.

74-314. (7611) Merchandise not in existence. One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care

History: En. Sec. 2375, Civ. C. 1895; re-en. Sec. 5108, Rev. C. 1907; re-en. Sec. 7611, R. C. M. 1921. Cal. Civ. C. Sec. 1768. Field Civ. C. Sec. 882.

Collateral References Sales 265-274. 77 C.J.S. Sales § 314.

74-315. (7612) Manufacturer's warranty against latent defects. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

History: En. Sec. 2376, Civ. C. 1895; re-en. Sec. 5109, Rev. C. 1907; re-en. Sec. 7612, R. C. M. 1921. Cal. Civ. C. Sec. 1769. Field Civ. C. Sec. 883.

Privity of Contract

In action for breach of warranty no recovery may be had in the absence of privity of contract between the manufac-

turer and the person seeking to enforce the warranty. Larson v. United States Rubber Co., 163 F Supp 327, 328, 330.

Collateral References

Sales \$268(2).
77 C.J.S. Sales § 315.
46 Am. Jur. 528, Sales, § 345.

74-316. (7613) Thing bought for particular purpose. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

History: En. Sec. 2377, Civ. C. 1895; re-en. Sec. 5110, Rev. C. 1907; re-en. Sec. 7613, R. C. M. 1921. Cal. Civ. C. Sec. 1770. Field Civ. C. Sec. 884.

Cross-Reference

Damages for breach of warranty, sec. 17-314.

Application of Section

Where defendant did not have enough linseed pellets to fill plaintiff's order for sheep feed and suggested that plaintiff try another type of pellet which was a part of defendant's stock on hand it was improper to instruct under this section since there was no evidence that such pellets were manufactured under the order for a specific purpose. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 553.

Breach of Implied Warranty

One who purchases articles for a particular purpose need not rescind the contract and restore them to the seller upon discovering a breach of the implied warranty, but may set up his claim for damages by way of counterclaim in an action by the plaintiff for the purchase price. Busbee v. Gagnon Co., 50 M 203, 212, 146 P 275.

Collateral References

Sales ≈ 273. 77 C.J.S. Sales § 325.

46 Am. Jur. 529 et seq., Sales, § 346 et seq.

Implied warranty of fitness by one serving food. 7 ALR 2d 1027.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

74-317. (7614) When thing cannot be examined by buyer. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

History: En. Sec. 2378, Civ. C. 1895; re-en. Sec. 5111, Rev. C. 1907; re-en. Sec. 7614, R. C. M. 1921. Cal. Civ. C. Sec. 1771. Field Civ. C. Sec. 885.

Equal Opportunity To Discover Defect

In an action for personal injuries alleged to have been sustained by the use of a defective douche held, that the seller not having been the manufacturer of the article under section 74-316, and the plaintiff having had an equal opportunity with the seller to discover its alleged defects, there was no implied warranty under this section. Harrington v. Mont-

gomery Drug Co., 111 M 564, 566, 111 P 2d 808.

Retail seller of tubeless "recap" tire was not liable under this section for injuries sustained by automobile passenger in accident caused by "blow-out" since automobile owner had equal opportunity to inspect tire and discover any defects and did in fact inspect tire. Brock v. Rothwell, 154 M 144, 461 P 2d 6.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

74-318. (7615) Trade-marks. One who sells or agrees to sell any article to which there is affixed or attached a trade-mark, thereby warrants that trade-mark to be genuine and lawfully used.

History: En. Sec. 2379, Civ. C. 1895; re-en. Sec. 5112, Rev. C. 1907; re-en. Sec. 7615, R. C. M. 1921. Cal. Civ. C. Sec. 1772. Field Civ. C. Sec. 886.

Collateral References

Sales \$\iiin 262\frac{1}{2}, 264.
77 C.J.S. Sales §\\$ 314, 328.
46 Am. Jur. 535, Sales, \\$ 351.

Implied warranty of fitness on sale of article by trade name, trade-mark or other particular description. 49 ALR 2d 852.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

74-319. (7616) Other marks. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the

quantity or quality thereof, or the place where it was, in whole or in part, produced, manufactured, or prepared, thereby warrants the truth thereof.

History: En. Sec. 2380, Civ. C. 1895; re-en. Sec. 5113, Rev. C. 1907; re-en. Sec. 7616, R. C. M. 1921. Cal. Civ. C. Sec. 1773. Field Civ. C. Sec. 887.

Collateral References Sales©⇒261. 77 C.J.S. Sales § 307.

74-320. (7617) Warranty on sale of written instrument. One who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause.

History: En. Sec. 2381, Civ. C. 1895; re-en. Sec. 5114, Rev. C. 1907; re-en. Sec. 7617, R. C. M. 1921. Cal. Civ. C. Sec. 1774. Field Civ. C. Sec. 888.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 40 (Fall 1959).

Collateral References

Sales ≈ 265 et seq. 77 C.J.S. Sales § 324.

74-321. (7618) Repealed—Chapter 264, Laws of 1963.

Repeal

Section 74-321 (Sec. 2382, Civ. C. 1895), relating to warranty of wholesomeness of

food sold, was repealed by Sec. 10-102, Ch. 264, Laws 1963.

DECISIONS UNDER FORMER LAW

Animal Food

Section applied to food for animal consumption. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 554.

Included Foods Sold in Cans, Sealed Packages and Bulk

Section was all-inclusive and covered foods sold in cans or sealed packages as well as in bulk. Bolitho v. Safeway Stores, Inc., 109 M 213, 216, 95 P 2d 443.

Insurer of Purity

Seller was insurer of the purity of food products sold by him, and guilty knowledge of its impurity was not necessary. Bolitho v. Safeway Stores, Inc., 109 M 213, 216, 95 P 2d 443.

Statute made sellers of food product the insurers of its purity whether or not they knew of any impurity. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 554.

Measure of Damages

Measure of damages for death of sheep due to eating feed sold by defendant was section 17-314 (now repealed) wherein defendant was liable for all damages that were foreseen, or could easily have been foreseen, as likely to result from the putting of the thing sold to the use for which it was sold. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 126 M 415, 252 P 2d 1040, 1045.

Negligence in Continuing Feed

Where some sheep died after feeding first day, whether plaintiff was negligent in continuing feed second day was for the jury. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 555.

Sale—Determination

Although pellets for sheep feed were sent to plaintiff under an invoice marked "Trial" without any price being stated, where there was evidence that defendant expected pay for the pellets if they proved palatable, it was a jury question whether the pellets had been "sold" and proper to give an instruction under this section. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 553.

74-322. (7619) Warranty on sale of good will. One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers.

History: En. Sec. 2383, Civ. C. 1895; re-en. Sec. 5116, Rev. C. 1907; re-en. Sec. 7619, R. C. M. 1921. Cal. Civ. C. Sec. 1776. Field Civ. C. Sec. 890.

Breach by Seller

Where buyer of business broke contract by failing to make agreed payments for exclusive business rights in a territory and seller entered the territory after buy-er's breach but in violation of the agreement, buyer was entitled to a setoff of the amount of profit which seller took from the restricted territory against seller's action for the full amount of the contract. Leiman-Scott, Inc. v. Holmes, 142 M 58, 381 P 2d 489.

74-323. (7620) Warranty upon judicial sale. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

History: En. Sec. 2384, Civ. C. 1895; re-en. Sec. 5117, Rev. C. 1907; re-en. Sec. 7620, R. C. M. 1921. Cal. Civ. C. Sec. 1777. Field Civ. C. Sec. 891.

Collateral References Judicial Sales 48. 50 C.J.S. Judicial Sales §§ 8, 64.

74-324. (7621) Effect of general warranty. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

History: En. Sec. 2385, Civ. C. 1895; re-en. Sec. 5118, Rev. C. 1907; re-en. Sec. 7621, R. C. M. 1921. Cal. Civ. C. Sec. 1778. Field Civ. C. Sec. 892.

Collateral References Sales@=262, 268. 77 C.J.S. Sales §§ 310, 311.

74-325. Uniform Commercial Code—applicability. This chapter shall not apply to sales subject to the Uniform Commercial Code.

History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963.

Cross-Reference

Uniform Commercial Code, sec. 87A-2-101 et seq.

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1 (Fall 1959).

CHAPTER 4

RIGHTS AND OBLIGATIONS OF BUYER—INSPECTION AND PAYMENT

(Repealed-Section 10-102, Chapter 264, Laws of 1963)

74-401 to 74-403. (7622 to 7624) Repealed.

Repeal

Sections 74-401 to 74-403 (Secs. 2400 to 2402, Civ. C. 1895), relating to the rights and obligations of the buyer of goods, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

CHAPTER 5

EXCHANGE

Section 74-501. Exchange defined.

74-502. Repealed.

74-503. Parties have rights and obligations of sellers and buyers.

74-504. Warranty of money. 74-505. Uniform Commercial Code—applicability.

74-501. (7632) Exchange defined. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

History: En. Sec. 2430, Civ. C. 1895; re-en. Sec. 5129, Rev. C. 1907; re-en. Sec. 7632, R. C. M. 1921. Cal. Civ. C. Sec. 1804. Field Civ. C. Sec. 903.

Collateral References

Exchange of Property 2.

33 C.J.S. Exchange of Property § 1. 52 Am. Jur. 678, Trades and Exchanges of Property, § 2.

Selling agent's power to exchange or barter principal's personal property. 44 ALR 2d 1058.

Measure of infant's recovery for value of chattel traded for another upon his

rescission of the transaction. 52 ALR 2d 1114.

Tort liability for damages for misrepresentation as to area of real property sold or exchanged. 54 ALR 2d 660.

Power of municipal corporation to exchange its real property. 60 ALR 2d 220.

Trustee's power to exchange trust property for share of corporation organized to hold the property. 20 ALR 3d 841.

Taxation: construction and application of \$1034 of Internal Revenue Code of 1954 (26 USC \$1034) concerning nonrecognition of gain on sale or exchange of residential property. 5 ALR Fed 205.

74-502. (7633) Repealed—Chapter 264, Laws of 1963.

Repeal

Section 74-502 (Sec. 2431, Civ. C. 1895), a statute of frauds applicable to con-

tracts for exchange, was repealed by Sec. 10-102, Ch. 264, Laws 1963.

74-503. (7634) Parties have rights and obligations of sellers and buyers. The provisions of the chapters on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

History: En. Sec. 2432, Civ. C. 1895; re-en. Sec. 5131, Rev. C. 1907; re-en. Sec. 7634, R. C. M. 1921. Cal. Civ. C. Sec. 1806. Field Civ. C. Sec. 905.

Collateral References

Exchange of Property \$9-14.
33 C.J.S. Exchange of Property §§ 6, 7.

74-504. (7635) Warranty of money. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

History: En. Sec. 2433, Civ. C. 1895; 7635, R. C. M. 1921. Cal. Civ. C. Sec. 1807. re-en. Sec. 5132, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 906.

74-505. Uniform Commercial Code—applicability. The provisions of this chapter shall not apply to exchanges subject to the Uniform Commercial Code.

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963.

Cross-Reference

Uniform Commercial Code, sec. 87A-2-101 et seq.

Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1 (Fall 1959).

CHAPTER 6

RETAIL INSTALLMENT SALES

Section 74-601. Short title.

74-602. Definitions.

74-603. Licensing of sales finance companies required. 74-604. Denial, suspension or revocation of licenses.

74-605. Investigations and complaints.

74-606. Powers of superintendent.

74-607. Requirements and prohibitions as to retail installment contracts.

74-608. Finance charge limitation. 74-609. Refunds on prepayment.

74-610. Refinancing retail installment contract.

74-611. Penalties. 74-612. Waiver.

74-601. Short title. This act may be cited as the "Montana Retail Installment Sales Act."

History: En. Sec. 1, Ch. 282, L. 1959.

Law Review

Cross-References

Consumer Loan Act, sec. 47-201 et seq. Loans in general, sec. 47-101 et seq.

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 93 (Fall 1959).

- 74-602. Definitions. Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:
- (a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom.
- (b) "Services" means work, labor and services furnished in the delivery, installation, servicing, repair or improvement of goods.
- (c) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.
- (d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.
- (e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.
- (f) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of goods or services, by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.
- (g) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made thereunder from time to time pursuant to which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller, and under the terms of which a finance

charge, as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

- (h) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state pursuant to which a buyer promises to pay in one or more deferred installments the time sale price of goods and/or services. The term includes a chattel mortgage, conditional sales contract and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.
- (i) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if such sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing or improving the goods.
- (j) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.
- (k) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.
- (l) "Finance charge" means the amount, as limited by section 74-608, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.
- (m) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and the finance charge.
- (n) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, Morris Plan company or savings and loan association, if so engaged. The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases

are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

- (o) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement, or a person who establishes and administers retail charge account agreements with retail buyers, the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred, or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.
- (p) "Person" means an individual, partnership, corporation, association, and any other group however organized.
- (q) "Superintendent" means the state superintendent of banks of the state of Montana.
- (r) Words in the singular include the plural, the masculine includes the feminine and the neuter, and vice versa.
- (s) This act shall have no application to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by such banks or other lending institutions except this act pertains to the extension of credit by such banks or other lending institutions pursuant to retail installment contracts or credit cards issued by such banks or other lending institutions.

History: En. Sec. 2, Ch. 282, L. 1959; amd. Sec. 1, Ch. 416, L. 1971.

apply to suits pending before the effective date.

Compiler's Note

Section 3 of Ch. 416, Laws 1971 provided that the amendatory act take effect on July 1, 1971, but that it should not

Collateral References

Constitutionality, construction, and application of statute respecting sale, assignment or transfer of retail installment contracts. 10 ALR 2d 447.

- 74-603. Licensing of sales finance companies required. (a) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this act: Provided, however, that no bank, trust company or savings and loan association authorized to do business in this state shall be required to obtain a license under this act but shall comply with all of the other provisions of this act.
- (b) The application for such license shall be in writing, under oath and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, and such other pertinent information as the superintendent may require.
- (c) The license fee for each calendar year or part thereof shall be the sum of one hundred dollars (\$100) for each place of business of the licensee in this state.

- (d) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the superintendent shall endorse the change of location of the license without charge.
- (e) Upon the filing of such application, and the payment of said fee, the superintendent shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this act under any other name.

History: En. Sec. 3, Ch. 282, L. 1959.

- 74-604. Denial, suspension or revocation of licenses. (a) Renewal of a license originally granted under this act may be denied, or a license may be suspended or revoked by the superintendent on the following grounds: (1) Material misstatement of fact in the application for license; (2) willful failure to comply with any provision of this act relating to retail installment contracts; (3) defrauding any retail buyer to the buyer's damage; (4) fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.
- (b) If a licensee is a partnership, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantage accruing from said acts or otherwise ratified said acts.
- (c) No license shall be denied, suspended or revoked, except after hearing thereon. The superintendent shall give the licensee at least ten (10) days' written notice, in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the superintendent and shall not be effective until after thirty (30) days' written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.
- (d) Any person, licensee, or applicant, considering himself aggrieved by an order of the superintendent may within thirty (30) days from the

entry of the order complained of, apply for writ of review in accordance with the provisions of chapter 90 of Title 93 of the Revised Codes of Montana of 1947.

History: En. Sec. 4, Ch. 282, L. 1959.

- 74-605. Investigations and complaints. (a) The superintendent, or his duly authorized representatives, shall have the power to make such investigations as he shall deem necessary and, to the extent necessary for this purpose, he may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts and documents.
- (b) Any retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the superintendent a written complaint setting forth the details of such alleged violation and the superintendent, upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History: En. Sec. 5, Ch. 282, L. 1959.

- 74-606. Powers of superintendent. (a) The superintendent shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this act. All rules and regulations of general application shall be filed in the office of the superintendent. A copy of every such rule or regulation shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date; Provided, however, the failure of a licensee to receive a copy of such rules or regulations shall not exempt him from the duty of compliance with such rules and regulations lawfully promulgated hereunder.
- (b) The superintendent shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this act. The superintendent shall have the power to administer oaths and affirmations to any person whose testimony is required.
- (c) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court of the county in which the licensed premises are located may, upon application and proof of such refusal, make an order awarding process of subpoena or subpoena duces tecum for the witness to appear before the superintendent and to give testimony, and to produce evidence as required thereby. Upon filing such order, in the office of the clerk of the said court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.
- (d) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the superintendent may apply to the judge of the court issuing such subpoena for an attachment against such person, as for a contempt.

The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence that may be proper by a fine, not exceeding one hundred dollars (\$100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

History: En. Sec. 6, Ch. 282, L. 1959.

- 74-607. Requirements and prohibitions as to retail installment contracts. (a) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such cases, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time and in such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.
- (b) The printed portion of the contract, other than instructions for completion, shall be in at least eight (8) point type. The contract shall contain the following notice in a size equal to at least ten (10) point bold type:
- 1. "Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.
 - 2. "You are entitled to an exact copy of the contract you sign.
- 3. "Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."
- (c) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least ten (10) point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.
- (d) The seller shall deliver to the buyer or mail to him at his address shown in the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal

to at least ten (10) point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

- (e) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods sold or services furnished or to be furnished, and shall clearly state and describe any collateral security taken for the buyer's obligation.
- (f) The contract shall contain the following items: (1) The cash sale price of the goods or services; (2) the amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of the goods traded in; (3) the difference between items one and two; (4) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits; (5) the amount of official fees; (6) the principal balance which is the sum of items three, four and five; (7) the amount of the finance charge; (8) the total amount of the time balance stated as one sum in dollars and cents, which is the sum of items six and seven, payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

The above items need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

The amount, if any, included for insurance, which may be purchased by the holder of the contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where such rates are required by law to be approved by said department. All such insurance shall be written by an insurance company authorized to do business in this state and shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state. A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder, as well as the buyer, but such insurance shall be limited to insurance against substantial risk of loss, damage or destruction of the goods. Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer. If such insurance for which such identified charge is made insures the life. safety or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within thirty (30) days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance, or, if a certificate, a summary thereof. The seller shall not decline existing insurance written by an insurance company authorized to do business in this state and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company: Provided, however, that the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonable or arbitrarily withheld, and further, that the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his agent, broker or company, shall be optional with the seller.

- (h) If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder, shall be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.
- (i) A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed fifteen dollars (\$15.00).
- (j) The holder may collect a delinquency charge on each installment in default for a period not less than ten (10) days in an amount not in excess of five per cent (5%) of each installment or five dollars (\$5.00), whichever is less or, in lieu thereof, interest after maturity on each such installment not exceeding the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding fifteen per cent (15%) of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with such delinquency.
- (k) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of subsection (d) of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed, did not contain any blank spaces except as herein provided, and of compliance with this section in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract.
- (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.
- (m) After payment of all sums for which the buyer is obligated under a contract, and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

History: En. Sec. 7, Ch. 282, L. 1959.

Attorney's Fees

This section, unlike other sections of this code governing recovery of attorney's fees, is permissive and designed to inform the holder of a retail installment sale contract what he may recover in addition to damages when the contract has been breached by the buyer, and unless it is stipulated by contract, the buyer has no right to attorney fees

should he successfully resist the action on the contract. Stalcup v. Montana Trailer Sales & Equipment Co., 146 M 494, 409 P 2d 542.

Collateral References

Construction and effect of disclosure statutes requiring one extending credit or making loan to give statement showing terms as to amounts involved and charges made. 14 ALR 3d 330.

- 74-608. Finance charge limitation. (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:
 - (1) As to motor vehicles:
 - Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars (\$7) per one hundred dollars (\$100) per year.
 - Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made—nine dollars (\$9) per one hundred dollars (\$100) per year.
 - Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars (\$11) per one hundred dollars (\$100) per year.
 - (2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11), per one hundred dollars (\$100) per year; (ii) if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); (iii) if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000).
- (b) Such finance charge shall be computed on the principal balance as determined under section 74-607 (f) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars (\$20) may be charged on any retail installment contract.
- (c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

- (d) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for, and the seller or holder may charge, collect and receive a finance charge, as specified herein, for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed one and one-half per cent (1½%) for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:
- (i) the average daily balance in the account in the billing cycle period; or
- (ii) the median amount within a ten dollar (\$10) range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.
- (e) If the finance charge so determined pursuant to (d) above, for such monthly period is less than fifty cents (50ϕ) , a maximum finance charge not in excess of fifty cents (50ϕ) may be charged, received and collected for such period.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963; amd. Sec. 2, Ch. 416, L. 1971.

Compiler's Note

Section 3 of Ch. 416, Laws 1971 provided that the amendatory act take effect on July 1, 1971, but that it should not apply to suits pending before the effective date. Section 3 further provided that all finance charges charged, collected or received on or after the effective date under any retail charge account agreement should be governed by this section, as amended.

Interest on Conditional Sales Contracts
In a diversity action to recover the bal-

ance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to this section, was 16.3% which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, federal court applied the doctrine of abstention and postponed further action until the issue was determined by the supreme court of Montana. B-W Acceptance Corp. v. Torgerson, 234 F Supp 214, 216.

74-609. Refunds on prepayment. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning one (1) month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1.00) no refund need be made.

History: En. Sec. 9, Ch. 282, L. 1959.

74-610. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments, or defer payment or payments, or renew or restate the unpaid time balance of such contract,

the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to section 74-609, at the rate of the finance charge specified in section 74-608(a) and by reclassifying in the case of motor vehicles by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under section 74-608(b) and an acquisition cost under section 74-609 shall not apply in calculating refinance charges on the contract extended, deferred, renewed or restated. If all unpaid installments are deferred for not more than two (2) months, the holder may at his election charge and collect for such deferment an amount equal to the difference between (a) the refund required for prepayment in full under section 74-609 as of the scheduled due date of the first deferred installment, and (b) the refund required for prepayment in full as of one (1) month prior to said date, times the number of months in which no scheduled payment is made.

History: En. Sec. 10, Ch. 282, L. 1959.

- 74-611. Penalties. (a) Any person who shall knowingly violate any provision of this act or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both.
- (b) Any person violating sections 74-607 to 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract.

History: En. Sec. 11, Ch. 282, L. 1959.

74-612. Waiver. Any waiver of the provisions of this act shall be unenforceable and void.

History: En. Sec. 12, Ch. 282, L. 1959.

TITLE 75

SCHOOLS

State board of education—composition, powers and duties, Repealed— Section 63, Chapter 2, Laws of 1971; Section 496, Chapter 5, Laws of 1971.

Residence halls at state educational institutions, Repealed-Section 63,

Chapter 2, Laws of 1971.

Control of state educational institutions, Repealed-Section 63, Chapter 2, Laws of 1971. The Montana university system, Repealed-Section 63, Chapter 2, Laws of

University of Montana—law and forestry schools, Repealed—Section 63, Chapter 2, Laws of 1971.

State bureau of mines and geology, Repealed-Section 63, Chapter 2, Laws of 1971.

Montana state university-Montana wool laboratory-agricultural experi-

ment stations, Repealed-Section 63, Chapter 2, Laws of 1971. Montana grain inspection laboratory, Repealed-Section 63, Chapter 2, Laws of 1971.

- Northern Montana college, Repealed—Section 63, Chapter 2, Laws of 1971. Western Montana college (75-1001 to 75-1006 Repealed, 75-1007 Trans-10. ferred).
- 11. Eastern Montana college, Repealed-Section 63, Chapter 2, Laws of 1971. Historic and prehistoric structures, Repealed-Section 63, Chapter 2, Laws 12. of 1971; Section 496, Chapter 5, Laws of 1971.

The public schools-superintendent of public instruction, Repealed-Sec-13. tion 496, Chapter 5, Laws of 1971.

Exceptional children-Courses of instruction for, Repealed-Section 496, 14. Chapter 5, Laws of 1971.

County superintendent of schools, Repealed-Section 496, Chapter 5, Laws 15. of 1971.

- School trustees, Repealed-Section 496, Chapter 5, Laws of 1971. Budget system, Repealed-Section 496, Chapter 5, Laws of 1971.
- School districts, Repealed-Section 496, Chapter 5, Laws of 1971. 18. Clerks of school districts-school census, Repealed-Section 496, Chapter
- 19. 5, Laws of 1971.
- Grades and courses of study in the public schools—correspondence schools 20. -visual teaching, Repealed-Section 63, Chapter 2, Laws of 1971; Section 496, Chapter 5, Laws of 1971.
- Americanization schools, Repealed-Section 496, Chapter 5, Laws of 1971. 21.
- School day, month and year—holidays—Constitution, Pioneer and Arbor day, Repealed—Section 496, Chapter 5, Laws of 1971.

 Fire drills—instruction in fire dangers and prevention and prevention of 23.
- communicable diseases, Repealed-Section 496, Chapter 5, Laws of 1971. Teachers-powers and duties-election-dismissal, Repealed-Section 496, 24.
- Chapter 5, Laws of 1971. Teachers' examinations and certificates, Repealed-Section 496, Chapter 25. 5, Laws of 1971.
- Teachers' institutes and summer schools, Repealed-Section 1, Chapter 26, 26. Laws of 1961.
- Teachers' retirement system, Repealed-Section 496, Chapter 5, Laws of 27. 1971.
- Pupils-discipline-secret fraternities prohibited, Repealed-Section 496, 28. Chapter 5, Laws of 1971.
- Compulsory school attendance—truant officers, Repealed—Section 496, Chapter 5, Laws of 1971. 29.
- Juvenile disorderly persons-commitment to industrial school, Repealed-30. Section 16, Chapter 262, Laws of 1969.
- Schoolhouse sites and construction, Repealed-Section 496, Chapter 5, 31. Laws of 1971.

School libraries, Repealed-Section 496, Chapter 5, Laws of 1971. 32.

SCHOOLS

- 33. School buses-requirements-drivers' qualifications-construction and operation, Repealed-Section 496, Chapter 5, Laws of 1971.
- Transportation of pupils, Repealed-Section 496, Chapter 5, Laws of 1971. 34.
- 35. Free textbooks, Repealed—Section 496, Chapter 5, Laws of 1971. Uniform system of free public schools—state support—schedule of contributions, Repealed—Section 496, Chapter 5, Laws of 1971. 36.

Finance, Repealed-Section 496, Chapter 5, Laws of 1971. 37.

Extra taxation for school purposes, Repealed-Section 496, Chapter 5, 38. Laws of 1971.

Bonds, Repealed-Section 496, Chapter 5, Laws of 1971. 39.

Manual and industrial training, Repealed-Section 496, Chapter 5, Laws 40. of 1971.

41. High schools—county—junior and district—joint school systems, Repealed-Section 496, Chapter 5, Laws of 1971.

- 42. High schools-county-junior and district-joint school systems continued-vocational education, Repealed-Section 496, Chapter 5, Laws of 1971.
- Designation of high schools as vocational training centers, Repealed-43. Section 14, Chapter 250, Laws of 1969; Section 496, Chapter 5, Laws of 1971.
- 44. Junior colleges-establishment by county or district high school boards, Repealed—Section 20, Chapter 274, Laws of 1965; Section 496, Chapter 5, Laws of 1971.

High School Budget Act, Repealed-Section 496, Chapter 5, Laws of 1971. 45. High school districts—public works, Repealed—Section 496, Chapter 5,

Laws of 1971. Definitions and general provisions, Repealed—Section 63, Chapter 2, Laws of 1971; Section 496, Chapter 5, Laws of 1971. 47.

School lunch and child nutrition program, Repealed-Section 496, Chapter 48.

5, Laws of 1971.

49. Western Regional Higher Education Compact, 75-4901 to 75-4905.

Education classes for mentally retarded and physically handicapped children, Repealed—Section 496, Chapter 5, Laws of 1971. 50.

Federal aid, Repealed-Section 242, Chapter 147, Laws of 1963; Section 51. 496, Chapter 5, Laws of 1971.

Law enforcement academy, 75-5201 to 75-5208. 52.

- Driver education, Repealed-Section 12, Chapter 214, Laws of 1969: 53. Section 496, Chapter 5, Laws of 1971.
- School safety patrols, Repealed—Section 496, Chapter 5, Laws of 1971. School districts for nonsectarian child care institutions, Repealed—Section 54. 55.

496, Chapter 5, Laws of 1971. 56. Board of education, 75-5601 to 75-5608.

Superintendent of public instruction, 75-5701 to 75-5711. 57.

County superintendent, 75-5801 to 75-5811. 58.

59. School district trustees and officers, 75-5901 to 75-5941.

Teacher certification, 75-6001 to 75-6011. 60.

61. Employment of teachers, superintendents and principals, 75-6101 to 75-6128.

Teachers' retirement system, 75-6201 to 75-6218. 62.

Compulsory attendance and tuition agreements, 75-6301 to 75-6323. School elections, 75-6401 to 75-6423. 63.

65. School district organization and reorganization, 75-6501 to 75-6547.

Opening and closing of schools, 75-6601 to 75-6608. 66.

Budget system, 75-6701 to 75-6730. 67.

Financial administration, 75-6801 to 75-6814. 68.

69. State equalization aid to public schools, 75-6901 to 75-6927. 70. School buses and transportation of pupils, 75-7001 to 75-7024.

School district and county school bonds, 75-7101 to 75-7138. 71.

Elementary tuition and special purpose funds, 75-7201 to 75-7216. 72. Public school fund, educational co-operative agreements and grants to schools, 75-7301 to 75-7309. 73.

74. School terms and holidays, 75-7401 to 75-7407.

School accreditation, curriculum and adult education, 75-7501 to 75-7521. 75.

76. Textbooks, 75-7601 to 75-7611.

Vocational and technical education, 75-7701 to 75-7715. 77.

Special education for exceptional children, 75-7801 to 75-7816. 78.

Traffic education, 75-7901 to 75-7907.

- School food services, 75-8001 to 75-8006. Community college districts, 75-8101 to 75-8133.
- School sites, construction and leasing, 75-8201 to 75-8212. Miscellaneous provisions, 75-8301 to 75-8311. 82.
- Establishment of Montana university system, 75-8401 to 75-8429.
- Administration of university system, 75-8501 to 75-8516. Finance for university system, 75-8601 to 75-8610. Students in university system, 75-8701 to 75-8705.
- 87.
- Miscellaneous provisions relating to university system, 75-8801 to 75-8805. 88.
- Health education—drug and alcohol abuse instruction, 75-8901 to 75-8905.

STATE BOARD OF EDUCATION—COMPOSITION, POWERS AND DUTIES

(Repealed—Section 63, Chapter 2, Laws of 1971; Section 496, Chapter 5, Laws of 1971)

75-101 to 75-109. (830 to 836) Repealed.

Sections 75-101 to 75-109 (Secs. 1 to 7, pp. 158, 159, L. 1893; Sec. 1, Ch. 73, L. 1909; Secs. 100 to 106, Ch. 76, L. 1913; Secs. 1, 2, Ch. 196, L. 1919; Ch. 131, L. 1923; Sec. 1, Ch. 53, L. 1927; Sec. 1, Ch. 146, L. 1929; Sec. 1, Ch. 115, L. 1935; Secs. 1, 2, Ch. 14, L. 1939; Sec. 1, Ch. 101, L. 1941; Secs. 1, 2, Ch. 158, L. 1945; Sec. 1, Ch. 92, L. 1951; Secs. 1, 2, Ch. 236, L. 1953; Sec. 1, Ch. 266, L. 1959; Sec. 1, Ch. 260, L. 195 269, L. 1959; Sec. 1, Ch. 103, L. 1967; Sec. 31, Ch. 93, L. 1969), relating to the state board of education, were repealed by Sec. 63, Ch. 2, Laws 1971; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-5601 et seq.

CHAPTER 2

RESIDENCE HALLS AT STATE EDUCATIONAL INSTITUTIONS

(Repealed—Section 9, Chapter 232, Laws of 1961; Section 9, Chapter 252, Laws of 1963; Section 63, Chapter 2, Laws of 1971)

75-201 to 75-223. (836.1 to 836.6) Repealed.

Sections 75-201 to 75-223 (Secs. 1 to 6, Ch. 94, L. 1929; Secs. 1 to 5, Ch. 291, L. 1947; Secs. 1 to 5, Ch. 168, L. 1951; Secs. 1 to 6, Ch. 226, L. 1953; Secs. 1, 3 to 6, Ch. 186, L. 1955; Sec. 1, Ch. 158, L. 1961; Secs. 1 to 8, Ch. 232, L. 1961; Secs. 1 to 8, Ch. 252, L. 1963; Secs. 1, 2, Ch. 246, L. 1965; Sec. 1, Ch. 13, L. 1967; Sec. 1, Ch. 264, L. 1969), relating to residence halls at state educational institutions and revenue-producing facilities at the University of Montana, were repealed by Sec. 9, Ch. 232, Laws 1961; Sec. 9, Ch. 252, Laws 1963; Sec. 63, Ch. 2, Laws 1971.

CHAPTER 3

CONTROL OF STATE EDUCATIONAL INSTITUTIONS

(Repealed-Section 82, Chapter 266, Laws of 1963; Section 63, Chapter 2, Laws of 1971)

75-301 to 75-314. (841 to 851) Repealed.

Sections 75-301 to 75-314 (Secs. 2, 3, 5, 6, 10, 11, 13, Ch. 73, L. 1909; Secs. 107, 110, 111, Ch. 76, L. 1913; Sec. 4, Ch. 160, L. 1925; Sec. 1, Ch. 12, L. 1943; Secs. 3, 4, Ch. 158, L. 1945; Sec. 1, Ch. 82, L. 1951; Secs. 3 to 6, Ch. 242, L. 1953; Sec. 1, Ch. 25, L. 1957; Secs. 78 to 80, Ch. 266, L. 1963; Sec. 24, Ch. 271, L. 1963; Sec. 32, Ch. 177, L. 1965; Secs. 1, 2, Ch. 99, L. 1967), relating to control of state educational, charitable and reformatory institutions and research and development programs, were repealed by Sec. 82, Ch. 266, Laws 1965; Sec. 63, Ch. 2, Laws 1971.

THE MONTANA UNIVERSITY SYSTEM

(Repealed—Section 3, Chapter 3, Laws of 1965; Section 1, Chapter 127, Laws of 1967; Section 63, Chapter 2, Laws of 1971)

75-401 to 75-402.1, 75-403, 75-403.1 to 75-416. (852, 852.1, 853 to 860) Repealed.

Repeal

Sections 75-401 to 75-402.1, 75-403, 75-Sections 75-401 to 75-402.1, 75-403, 75-403.1 to 75-416 (Sec. 1542, Pol. C. 1895; Secs. 1 to 6, Ch. 92, L. 1913; Sec. 1, Ch. 123, L. 1917; Sec. 1, Ch. 49, L. 1923; Sec. 1, Ch. 41, L. 1925; Secs. 1, 2, Ch. 6, L. 1927; Sec. 1, Ch. 28, L. 1935; Secs. 1, 2, Ch. 68, L. 1943; Secs. 1, 2, Ch. 125, L. 1945; Secs. 5, 6, Ch. 158, L. 1945; Secs. 1, 2, Secs. 3, 6, Ch. 195, B. 1949; Secs. 1, 24, 25, Ch. 22, L. 1947; Sec. 1, Ch. 30, L. 1949; Secs. 1, 7 to 9, Ch. 242, L. 1953; Secs. 1, 2, Ch. 3, L. 1965), relating to the Montana university system, were repealed by Sec. 3, Ch. 3, Laws 1965; Sec. 1, Ch. 127, Laws 1967; Sec. 63, Ch. 2, Laws 1971. For present provisions, sec. 86, 75,8401 et seq. present provisions, see sec. 75-8401 et seq.

CHAPTER 5

UNIVERSITY OF MONTANA-LAW AND FORESTRY SCHOOLS (Repealed-Section 63, Chapter 2, Laws of 1971)

75-501 to 75-506,7, 75-507 to 75-515. (861 to 869, 872 to 877) Repealed.

Sections 75-501 to 75-506.7, 75-507 to 75-515 (Secs. 5 to 12, pp. 174 to 176, L. 1893; Secs. 1540, 1547 to 1554, Pol. C. 1895; Secs. 1 to 3, Ch. 31, L. 1911; Sec. 1, Ch. 44, L. 1911; Secs. 1 to 3, Ch. 131, L. 1913; Sec. 1, Ch. 10, L. 1921; Sec. 1, Ch. 115, L. 1947; Sec. 1, Ch. 108, L. 1951; Sec. 1, Ch. 87, L. 1961; Secs. 1 to 5, Ch. 164, L. 1965; Sec. 1, Ch. 129, L. 1967; Secs. 1 to 3, Ch. 299, L. 1967; Secs. 1 to 3, Ch. 139, L. 1969; Sec. 1, Ch. 173, L. 1969), relating to the University of Montana, were repealed by Sec. 63, Ch. 2, Laws 1971. 2. Laws 1971. For present provisions, see sec. 75-8401 et seq.

CHAPTER 6

STATE BUREAU OF MINES AND GEOLOGY (Repealed—Section 63, Chapter 2, Laws of 1971)

75-601 to 75-611. (878 to 888) Repealed.

Repeal

Sections 75-601 to 75-611 (Secs. 8, 16, pp. 178, 179, L. 1893; Secs. 1570, 1579, 1587, Pol. C. 1895; Secs. 1 to 7, Ch. 161, L. 1919; Sec. 1, Ch. 95, L. 1929; Sec. 1, Ch. 58, L. 1937; Secs. 1, 2, Ch. 287, L. 1969), relating to the school of mines and the state bureau of mines and geology, were repealed by Sec. 63, Ch. 2, Laws 1971. For present provisions, see secs. 75-8407 to 75-8409.

CHAPTER 7

MONTANA STATE UNIVERSITY—MONTANA WOOL LABORATORY— AGRICULTURAL EXPERIMENT STATIONS

(Repealed-Section 63, Chapter 2, Laws of 1971)

75-701 to 75-710.4, 75-711 to 75-738. (889 to 901) Repealed.

Repeal 1893; Secs. 1, 2, Ch. 64, L. 1907; Sec. 1, Sections 75-701 to 75-710.4, 75-711 to Ch. 146, L. 1907; Secs. 1, 2, 4, Ch. 189, 75-738 (Secs. 1, 7, 8, pp. 171 to 173, L. 1907; Sec. 109, Ch. 76, L. 1913; Secs.

1, 2, Ch. 19, L. 1915; Secs. 1 to 10, Ch. 166, L. 1945; Secs. 1 to 3, Ch. 190, L. 1947; Secs. 1, 2, Ch. 195, L. 1947; Secs. 1 to 3, Ch. 222, L. 1947; Secs. 1 to 3, Ch. 180, L. 1955; Secs. 1 to 4, Ch. 248, L. 1955; Secs. 1 to 3, Ch. 30, L. 1959; Secs. 235, 238, Ch. 147, L. 1963), relating to Montana

state university, the agricultural experiment stations, the wool laboratory and the coal utilization experiment project, were repealed by Sec. 63, Ch. 2, Laws 1971. For present provisions, see secs. 75-8410 to 75-8411.3.

CHAPTER 8

MONTANA GRAIN INSPECTION LABORATORY

(Repealed-Section 63, Chapter 2, Laws of 1971)

75-801 to 75-811. (902 to 912) Repealed.

Repeal

Sections 75-801 to 75-811 (Secs. 1 to 7, Ch. 119, L. 1913; Secs. 1 to 4, 9, Ch. 54, L. 1917; Secs. 236, 237, Ch. 147, L. 1963),

relating to the Montana grain inspection laboratory, were repealed by Sec. 63, Ch. 2, Laws 1971. For present provisions, see sec. 75-8411.4.

CHAPTER 9

NORTHERN MONTANA COLLEGE

(Repealed-Section 63, Chapter 2, Laws of 1971)

75-901 to 75-907. (917 to 923) Repealed.

Repeal

Sections 75-901 to 75-907 (Secs. 1 to 7, Ch. 67, L. 1913; Secs. 1 to 3, Ch. 66, L. 1925; Secs. 1, 2, Ch. 82, L. 1927), relating

to northern Montana college, were repealed by Sec. 63, Ch. 2, Laws 1971. For present provisions, see sec. 75-8428.

CHAPTER 10

WESTERN MONTANA COLLEGE

Section 75-1001 to 75-1006. Repealed. 75-1007. Transferred.

75-1001 to 75-1003. (926 to 928) Repealed—Chapter 2, Laws of 1971.

Repeal

Sections 75-1001 to 75-1003 (Secs. 1, 2, p. 180, L. 1893; Sec. 1, Ch. 29, L. 1903; Secs. 1, 2, Ch. 142, L. 1943; Secs. 1, 2,

Ch. 106, L. 1947), relating to western Montana college, were repealed by Sec. 63, Ch. 2, Laws 1971. For present provisions, see secs. 75-8424, 75-8426.

75-1004 and 75-1005. Repealed—Chapter 106, Laws of 1947.

75-1006. (929) Repealed—Chapter 2, Laws of 1971.

Repeal

Section 75-1006 (Sec. 4, p. 180, L. 1893; Sec. 1, Ch. 19, L. 1957), relating to acceptance of public lands, was repealed by Sec. 63, Ch. 2, Laws 1971.

75-1007. (930) Transferred to sec. 81-1007.1.

Compiler's Note

This section, relating to duties of the state board of land commissioners as to payment for securities purchased with

state normal school funds, has been transferred and re-codified as sec. 81-1007.1, R. C. M. 1947.

EASTERN MONTANA COLLEGE

(Repealed-Section 63, Chapter 2, Laws of 1971)

75-1101 to 75-1104. (930.1 to 930.4) Repealed.

Repeal

Sections 75-1101 to 75-1104 (Secs. 1 to 3, 5, Ch. 160, L. 1925), relating to eastern

Montana college, were repealed by Sec. 63, Ch. 2, Laws 1971. For present provisions, see secs. 75-8423, 75-8425.

CHAPTER 12

HISTORIC AND PREHISTORIC STRUCTURES

(Repealed—Section 2, Chapter 113, Laws of 1953; Section 63, Chapter 2, Laws of 1971; Section 496, Chapter 5, Laws of 1971)

75-1201, 75-1201.1 to 75-1206. Repealed.

Repeal

Sections 75-1201, 75-1201.1 to 75-1206 (Secs. 1 to 6, Ch. 78, L. 1939; Secs. 1, 3 to 7, Ch. 113, L. 1953), relating to historic and prehistoric structures and other ob-

jects of scientific interest on state lands, were repealed by Sec. 2, Ch. 113, Laws 1953; Sec. 63, Ch. 2, Laws 1971; Sec. 496, Ch. 5, Laws 1971.

CHAPTER 13

THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

(Repealed—Section 4, Chapter 182, Laws of 1949; Section 1, Chapter 90, Laws of 1951; Section 44, Chapter 93, Laws of 1969; Section 496, Chapter 5, Laws of 1971)

75-1301 to 75-1320. (931 to 946, 948, 949) Repealed.

Reneal

Sections 75-1301 to 75-1320 (Secs. 1700, 1702 to 1705, 1707 to 1714, Pol. C. 1895; Sec. 1, p. 129, L. 1897; Secs. 200 to 203, Ch. 76, L. 1913; Secs. 4, 5, Ch. 196, L. 1919; Sec. 3, Ch. 131, L. 1923; Sec. 1, Ch. 149, L. 1937; Sec. 1, Ch. 186, L. 1943; Sec. 1, Ch. 177, L. 1947; Sec. 1, Ch. 114, L. 1951; Sec. 1, Ch. 162, L. 1957; Sec. 1,

Ch. 68, L. 1959; Secs. 1, 2, Ch. 64, L. 1961; Sec. 226, Ch. 147, L. 1963; Sec. 33, Ch. 177, L. 1965; Sec. 1, Ch. 316, L. 1969), relating to the superintendent of public instruction, were repealed by Sec. 4, Ch. 182, Laws 1949; Sec. 1, Ch. 90, Laws 1951; Sec. 44, Ch. 93, Laws 1969; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-5701 et seq.

CHAPTER 14

EXCEPTIONAL CHILDREN—COURSES OF INSTRUCTION FOR

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-1401 to 75-1406. Repealed.

Repeal

Sections 75-1401 to 75-1406 (Secs. 1 to 5, Ch. 208, L. 1943; Sec. 1, Ch. 163, L. 1949; Sec. 1, Ch. 183, L. 1969), relating to in-

struction of exceptional children, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7801 et seq.

COUNTY SUPERINTENDENT OF SCHOOLS, ...;

(Repealed—Section 2, Chapter 108, Laws of 1949; Section 11, Chapter 142, Laws of 1949; Section 496, Chapter 5, Laws of 1971)

75-1501 to 75-1535. (950 to 971.1, 972 to 980, 4948, 4949) Repealed.

Repeal

Sections 75-1501 to 75-1535 (Secs. 8, 14, pp. 621, 622, Cod. Stat. 1871; Sec. 8, p. 118, L. 1874; Sec. 1, p. 53, L. 1883; Secs. 1730 to 1736, 1739 to 1742, Pol. C. 1895; Sec. 1742, p. 122, L. 1901; Sec. 1, Ch. 17, L. 1907; Sec. 2, Ch. 27, L. 1907; Sec. 1, Ch. 17, L. 1907; Sec. 2, Ch. 27, L. 1907; Sec. 1, Ch. 98, L. 1909; Secs. 300 to 303, Ch. 76, L. 1913; Sec. 1, Ch. 81, L. 1917; Secs. 1 to 3, Ch. 110, L. 1917; Sec. 1, Ch. 193, L. 1919; Secs. 6, 7, Ch. 196, L. 1919; Secs. 1 to 4, Ch. 164, L. 1921; Sec. 1, Ch. 82, L. 1925; Sec. 1, Ch. 97, L. 1925; Sec. 3, 4, Ch. 118, L. 1927; Sec. 1, Ch. 65, L. 1929; Sec. 1,

Ch. 118, L. 1929; Sec. 1, Ch. 84, L. 1931; Sec. 2, Ch. 16, L. 1933; Sec. 1, Ch. 20, L. 1939; Sec. 1, Ch. 168, L. 1943; Sec. 2, Ch. 186, L. 1943; Secs. 1, 2, Ch. 10, L. 1945; Sec. 1, Ch. 27, L. 1947; Secs. 1, 2, Ch. 194, L. 1947; Sec. 1, Ch. 109, L. 1951; Sec. 1, Ch. 141, L. 1955; Sec. 1, Ch. 242, L. 1955; Sec. 1, Ch. 121, L. 1959; Sec. 1, Ch. 23, L. 1961), relating to county superintendents of schools, were repealed by Sec. 2, Ch. 108, Laws 1949; Sec. 11, Ch. 142, Laws 1949; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-5801 et seq.

CHAPTER 16

SCHOOL TRUSTEES

(Repealed-Chapter 50, Laws of 1947; Section 496, Chapter 5, Laws of 1971)

75-1601 to 75-1632.1, 75-1633 to 75-1647. (985 to 1008, 1010.1 to 1015.2, 1016 to 1019) Repealed.

Repeal

Sections 75-1601 to 75-1632.1, 75-1633 to 75-1647 (Sec. 1880, 5th Div. Comp. Stat. 1887; Sec. 1, p. 243, L. 1891; Secs. 1770, 1777, 1779, 1780, 1782, 1793, 1794, 1801 to 1803, 1805, 1981, 1982, Pol. C. 1895; Secs. 1, 6, 8 to 11, 13, 14, pp. 136, 138, 139, 141 to 143, 145, L. 1897; Secs. 1, 4, 5, pp. 57, 59, L. 1899; Sec. 1, Ch. 69, L. 1907; Sec. 1, Ch. 32, L. 1909; Sec. 1, Ch. 16, L. 1911; Secs. 500 to 502, 504 to 511, 513, Ch. 76, L. 1913; Sec. 1, Ch. 61, L. 1917; Secs. 2, 7, Ch. 81, L. 1917; Secs. 11 to 13, Ch. 196, L. 1919; Sec. 1, Ch. 63, L. 1921; Sec. 1, Ch. 122, L. 1923; Sec. 1, Ch. 123, L. 1923; Sec. 2, Ch. 76, L. 1925; Sec. 1, Ch. 151, L. 1925; Secs. 2, 3, Ch. 77, L. 1927; Secs. 2, 3, Ch. 102, L. 1929; Sec. 2, Ch. 102, L. 1929; Sec. 2, Ch. 102, L. 1929; Sec. 2, Ch. 140, L. 1937; Secs. 1, Ch. 140, L. 1937; Secs. 1, Ch. 188, L. 1937; Secs. 1, 2, Ch. 83, L. 1939; Sec. 1, Ch. 106, L. 1939; Sec. 1, Ch. 217, L. 1939; Secs. 1, 2, Ch. 65, L. 1941; Sec. 1, Ch. 103, L. 1943; Sec.

1, Ch. 205, L. 1943; Sec. 1, Ch. 203, L. 1943; Sec. 1, Ch. 130, L. 1945; Sec. 1, Ch. 135, L. 1947; Sec. 1, Ch. 188, L. 1947; Sec. 1, Ch. 232, L. 1947; Secs. 1 to 3, Ch. 207, L. 1951; Sec. 1, Ch. 21, L. 1953; Secs. 1, 2, Ch. 233, L. 1953; Sec. 1, Ch. 44, L. 1955; Secs. 1, 2, Ch. 228, L. 1955; Sec. 1, Ch. 99, L. 1959; Sec. 1, Ch. 146, L. 1959; Sec. 1, Ch. 168, L. 1959; Sec. 1, Ch. 105, L. 1961; Sec. 1, Ch. 228, L. 1961; Sec. 1, Ch. 203; Sec. 1, Ch. 107, L. 1963; Sec. 1, Ch. 1965; Sec. 1, Ch. 163, L. 1965; Sec. 1, Ch. 251, L. 1963; Sec. 1, Ch. 144, L. 1965; Sec. 1, Ch. 127, L. 1965; Sec. 1, Ch. 143, L. 1965; Secs. 1 to 4, Ch. 249, L. 1965; Sec. 1, Ch. 46, L. 1967; Sec. 1, Ch. 255, L. 1967; Sec. 1, Ch. 255, L. 1967; Sec. 1, Ch. 242, L. 1967; Sec. 1, Ch. 275, L. 1967; Sec. 1, Ch. 296; Sec. 1, Ch. 297; Secs. 1, 208, L. 1967; Sec. 1, Ch. 242, L. 1969), relating to school trustees, were repealed by Ch. 50, Laws 1947; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-5901 et seq.

BUDGET SYSTEM

(Repealed-Chapter 50, Laws of 1947; Section 24, Chapter 199, Laws of 1949; Section 496, Chapter 5, Laws of 1971)

75-1701 to 75-1713.1, 75-1714 to 75-1723.1, 75-1724 to 75-1730. (1019.1 to 1019.26) Repealed.

Repeal

Sections 75-1701 to 75-1713.1, 75-1714 to 75-1723.1, 75-1724 to 75-1730 (Secs. 1 to 26, 75-1725,1, 75-1724 to 75-1730 (Sees. 1 to 26), Ch. 146, L. 1931; Sees. 1, 2, Ch. 63, L. 1941; Sec. 1, Ch. 193, L. 1943; Sees. 1 to 5, Ch. 134, L. 1945; Secs. 9, 10, Ch. 199, L. 1949; Secs. 1, 2, Ch. 208, L. 1951; Sec. 1, Ch. 247, L. 1953; Sec. 1, Ch. 124, L. 1959; Sec. 3, Ch. 62, L. 1961; Sec. 1, Ch. 151, L. 1961; Secs. 1, 2, Ch. 247, L. 1961; Secs. 1, 2, Ch. 182, L. 1963; Secs. 1, 2, Ch. 267, L. 1963; Secs. 1 to 3, Ch. 147, L. 1965; Sec. 1, Ch. 198, L. 1965; Sec. 1, Ch. 317, L. 1967; Sec. 1, Ch. 3, Ex. L. 1969), relating Chapter 50, Laws 1947; Sec. 24, Ch. 199, Laws 1949; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6701 et seq.

CHAPTER 18

SCHOOL DISTRICTS

(Repealed-Section 24, Chapter 199, Laws of 1949; Section 496, Chapter 5, Laws of 1971)

75-1801 to 75-1813.1, 75-1814 to 75-1834. (1020 to 1029.1, 1030, 1031, 1034 to 1036.2, 1037.1 to 1037.5, 1039 to 1039.10) Repealed.

Sections 75-1801 to 75-1813.1, 75-1814 to 75-1834 (Secs. 1750, 1751, 1755, 1759, 1760, Pol. C. 1895; Sec. 1, Ch. 82, L. 1911; Secs. 400 to 405, 407, 408, 608, Ch. 76, L. 1913; Sec. 1, Ch. 69, L. 1917; Secs. 8, 9, 17, Ch. 196, L. 1919; Secs. 1 to 6, Ch. 4, L. 1923; 196, L. 1919; Secs. 1 to 6, Ch. 4, L. 1923; Sec. 1, Ch. 18, L. 1923; Secs. 1 to 4, Ch. 34, L. 1923; Secs. 1, 2, Ch. 105, L. 1925; Secs. 1 to 5, Ch. 115, L. 1927; Sec. 1, Ch. 138, L. 1927; Sec. 1, Ch. 37, L. 1933; Sec. 1, Ch. 163, L. 1933; Sec. 1, Ch. 175, L. 1933; Sec. 1, Ch. 61, L. 1943; Sec. 1, Ch. 85, L. 1943; Sec. 1, Ch. 201, L. 1943; Sec. 1, Ch. 47, L. 1945; Sec. 1,

Ch. 32, L. 1951; Secs. 1, 3, Ch. 182, L. Ch. 32, L. 1951; Secs. 1, 3, Ch. 182, L. 1951; Sec. 1, Ch. 23, L. 1953; Sec. 1, Ch. 93, L. 1955; Sec. 1, Ch. 232, L. 1955; Sec. 1, Ch. 232, L. 1955; Sec. 1, Ch. 1961; Sec. 1, Ch. 140, L. 1963; Sec. 1, Ch. 203, L. 1963; Sec. 3, Ch. 267, L. 1963; Sec. 1, Ch. 141, L. 1965; Sec. 1, Ch. 171, L. 1965; Sec. 1, Ch. 271, L. 1967; Sec. 1, Ch. 364, L. 1969), relating to school districts, were repealed by Sec. 24, Ch. 199, Laws 1949; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6501 et seg. see sec. 75-6501 et seq.

CHAPTER 19

CLERKS OF SCHOOL DISTRICTS—SCHOOL CENSUS (Repealed-Section 496, Chapter 5, Laws of 1971)

75-1901 to 75-1905. (1049 to 1051.1, 1052) Repealed.

Repeal

Sections 75-1901 to 75-1905 (Sec. 28, p. 626, Cod. Stat. 1871; Sec. 1830, Pol. C. 1895; Sec. 6, p. 131, L. 1897; Sec. 5, p. 122, L. 1901; Sec. 1, Ch. 97, L. 1907; Sec. 1, Ch. 102, L. 1911; Sec. 4, Ch. 192, L. 1911; Sec. 512, Ch. 76, L. 1913; Sec. 3, Ch. 81, L. 1917; Secs. 14, 15, Ch. 196, L. 1919; Secs. 1, 2, Ch. 118, L. 1927; Sec.

1, Ch. 164, L. 1931; Sec. 1, Ch. 140, L. 1955; Sec. 1, Ch. 86, L. 1961; Sec. 1, Ch. 213, L. 1965; Sec. 1, Ch. 153, L. 1967), relating to the duties of school district clerks including the school census, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see secs. 75-5935 to 75-5938.

GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS—CORRESPONDENCE SCHOOLS—VISUAL TEACHING

(Repealed—Section 2, Chapter 252, Laws of 1967; Section 63, Chapter 2, Laws of 1971; Section 496, Chapter 5, Laws of 1971)

75-2001 to 75-2017. (1053 to 1057) Repealed.

Repeal

Sections 75-2001 to 75-2017 (Secs. 32, 33, 35, p. 627, Cod. Stat. 1871; Sec. 1, p. 64, L. 1899; Sec. 1, Ch. 23, L. 1903; Secs. 600 to 602, 604, 609, Ch. 76, L. 1913; Sec. 1, Ch. 127, L. 1917; Sec. 16, Ch. 196, L. 1919; Sec. 1, Ch. 72, L. 1931; Sec. 1, Ch. 158, L. 1937; Secs. 1 to 3, Ch. 70, L. 1939; Secs. 1, 2, Ch. 49, L. 1941; Secs. 1, 2, Ch. 71, L. 1941; Secs. 1, 2, Ch. 63, L. 1951; Secs. 1 to 3, Ch. 125, L. 1951; Secs. 1, 2,

Ch. 220, L. 1951; Sec. 1, Ch. 74, L. 1959; Sec. 1, Ch. 252, L. 1967), relating to grades and courses of instruction in the public schools, sectarian publications, qualifications for admission, the correspondence school and visual education, were repealed by Sec. 2, Ch. 252, Laws 1967; Sec. 63, Ch. 2, Laws 1971; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7503 et seq.

CHAPTER 21

AMERICANIZATION SCHOOLS

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-2101 to 75-2105. (1318 to 1322) Repealed.

Repeal

Sections 75-2101 to 75-2105 (Secs. 1 to 5, Ch. 38, L. 1919), relating to Ameri-

canization schools, were repealed by Sec. 496, Ch. 5, Laws 1971.

CHAPTER 22

SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—CONSTITUTION, PIONEER AND ARBOR DAY

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-2201 to 75-2215. (1059 to 1070, 3634) Repealed.

Repeal

Sections 75-2201 to 75-2215 (Secs. 36, 40, pp. 628, 629, Cod. Stat. 1871; Secs. 1894, 1898, 2040, 5th Div. Comp. Stat. 1887; Sec. 1, p. 103, Ex. L. 1887; Secs. 1843, 1862, 1864, 1990 to 1992, 3380, Pol. C. 1895; Sec. 7, p. 132, L. 1897; Secs. 1 to 5, Ch. 88, L. 1903; Secs. 1, 2, Ch. 11, L. 1907; Sec. 1, Ch. 28, L. 1909; Sec. 1, Ch. 35, L. 1909; Sec. 1, Ch. 83, L. 1909; Sec. 1, Ch. 51, L. 1911; Secs. 605, 607, 807,

1300, 1400, 1401, Ch. 76, L. 1913; Sec. 4, Ch. 81, L. 1917; Secs. 1, 2, Ch. 240, L. 1921; Sec. 1, Ch. 183, L. 1933; Secs. 1, 2, Ch. 194, L. 1937; Sec. 1, Ch. 31, L. 1957; Secs. 1, 2, Ch. 114, L. 1961; Sec. 1, Ch. 61, L. 1963), relating to the school day, month and year, legal holidays, Constitution day, Pioneer day and Arbor day, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7401 et seq.

CHAPTER 23

FIRE DRILLS—INSTRUCTION IN FIRE DANGERS AND PREVENTION AND PREVENTION OF COMMUNICABLE DISEASES

(Repealed—Section 496, Chapter 5, Laws of 1971)

75-2301 to 75-2303. (1071 to 1073) Repealed.

Repeal

Sections 75-2301 to 75-2303 (Sec. 1, Ch. 27, L. 1909; Sec. 1, Ch. 24, L. 1911; Secs.

610 to 612, Ch. 76, L. 1913; Sec. 1, Ch. 90, L. 1931; Sec. 1, Ch. 24, L. 1959), relating to fire drills and instruction in fire

danger and prevention of communicable 5, Laws 1971. For present provisions, see diseases, were repealed by Sec. 496, Ch. secs. 75-8308, 75-8309, and 75-8904.

CHAPTER 24

TEACHERS—POWERS AND DUTIES—ELECTION—DISMISSAL

(Repealed—Section 496, Chapter 5, Laws of 1971)

75-2401 to 75-2405.1, 75-2406 to 75-2411. (1075 to 1085) Repealed.

Repeal

Sections 75-2401 to 75-2405.1, 75-2406 to 75-2411 (Secs. 38, 39, 41, 42, 57, 58, pp. 628, 629, 634, Cod. Stat. 1871; Secs. 1841, 1842, 1844 to 1846, 1848, 2022, 2023, Pol. C. 1895; Secs. 801 to 805, Ch. 76, L. 1913; Sec. 5, Ch. 81, L. 1917; Sec. 1, Ch.

87, L. 1927; Sec. 1, Ch. 166, L. 1949; Sec. 1, Ch. 26, L. 1957; Sec. 1, Ch. 144, L. 1963; Sec. 1, Ch. 365, L. 1969), relating to teachers' election, dismissal, powers and duties, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6101 et sec.

CHAPTER 25

TEACHERS' EXAMINATIONS AND CERTIFICATES

(Repealed—Section 11, Chapter 142, Laws of 1949; Section 1, Chapter 89, Laws of 1951; Section 2, Chapter 187, Laws of 1959; Section 496, Chapter 5, Laws of 1971)

75-2501 to 75-2522. (1088 to 1090, 1092, 1095, 1097, 1098, 1101, 1102, 1104) Repealed.

Repeal

Sections 75-2501 to 75-2522 (Secs. 1, 2, Ch. 47, L. 1907; Secs. 900, 901, 904, 905, 907, 908, 910, Ch. 76, L. 1913; Secs. 20, 22, 23, 25, 26, Ch. 196, L. 1919; Sec. 8, Ch. 131, L. 1923; Secs. 1 to 3, 5, 7, 10, 11, Ch. 147, L. 1931; Secs. 3 to 10, Ch. 186, L. 1943; Sec. 1, Ch. 90, L. 1947; Secs. 1 to 10, Ch. 142, L. 1949; Sec. 1, Ch. 91, L. 1951; Secs. 1, 3 to 5, Ch. 187, L. 1959; Sec. 1, Ch. 83, L. 1961; Sec. 1,

Ch. 90, L. 1961; Sec. 1, Ch. 171, L. 1961; Sec. 62, Ch. 147, L. 1963; Secs. 1, 2, Ch. 34, L. 1965; Sec. 32, Ch. 121, L. 1965; Sec. 1, Ch. 242, L. 1965), relating to teachers' examinations and certificates, were repealed by Sec. 11, Ch. 142, Laws 1949; Sec. 1, Ch. 89, Laws 1951; Sec. 2, Ch. 187, Laws 1959; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6001 et seq.

CHAPTER 26

TEACHERS' INSTITUTES AND SUMMER SCHOOLS (Repealed—Section 1, Chapter 26, Laws of 1961)

75-2601 to 75-2608. (1105 to 1112) Repealed.

Repeal

Sections 75-2601 to 75-2608 (Secs. 8 to 10, pp. 132, 133, L. 1897; Secs. 1, 2, Ch. 60, L. 1905; Secs. 1, 2, Ch. 148, L. 1907;

Secs. 1000 to 1007, Ch. 76, L. 1913), relating to teachers' institutes and summer schools, were repealed by Sec. 1, Ch. 26, Laws 1961.

CHAPTER 27

TEACHERS' RETIREMENT SYSTEM

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-2701 to 75-2709.2, 75-2710 to 75-2716. Repealed.

Repeal

Sections 75-2701 to 75-2709.2, 75-2710 to 75-2716 (Secs. 1 to 10, 12 to 14, 16, Ch.

87, L. 1937; Secs. 1 to 4, Ch. 202, L. 1939; Secs. 1 to 4, Ch. 215, L. 1939; Sec. 1, Ch. 15, L. 1945; Secs. 1 to 3, Ch. 137, L. 1945; Secs. 1 to 6, Ch. 28, L. 1949; Sec. 1, Ch. 157, L. 1953; Sec. 3, Ch. 176, L. 1953; Secs. 2 to 5, Ch. 216, L. 1953; Sec. 1, Ch. 160, L. 1955; Sec. 1, Ch. 235, L. 1959; Sec. 1, Ch. 239, L. 1959; Secs. 1, 2, Ch. 270, L. 1959; Secs. 1, 200, Ch. 270, L. 1959; Secs. 1, 200, Ch. 270, Ch. 1959; Sec. 196, Ch. 147, L. 1963; Sec. 1, Ch. 209, L. 1963; Secs. 1, 2, Ch. 216, L. 1963; Secs. 1, Ch. 33, L. 1965; Sec. 34, Ch. 177, L. 1965; Sec. 1, Ch. 259, L. 1965;

Sec. 1, Ch. 84, L. 1967; Secs. 1, 2, Ch. 117, L. 1967; Sec. 1, Ch. 238, L. 1967; Sec. 1, Ch. 240, L. 1967; Sec. 1, Ch. 241, L. 1967; Sec. 1, Ch. 242, L. 1967; Sec. 1, Ch. 242, L. 1967; Sec. 1, Ch. 69, L. 1969; Sec. 1, Ch. 70, L. 1969), relating to the teachers' retirement system, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6201

CHAPTER 28

PUPILS—DISCIPLINE—SECRET FRATERNITIES PROHIBITED (Repealed-Section 496, Chapter 5, Laws of 1971)

75-2801, 75-2802. (1133, 1134) Repealed.

Repeal

Sections 75-2801, 75-2802 (Sec. 37, p. 628, Cod. Stat. 1871; Secs. 700, 701, Ch. 76, L. 1913), relating to discipline of

pupils and prohibiting secret fraternities, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see secs. 75-6310 to 75-6312.

CHAPTER 29

COMPULSORY SCHOOL ATTENDANCE—TRUANT OFFICERS (Repealed—Section 496, Chapter 5, Laws of 1971)

75-2901 to 75-2910. (1135 to 1140) Repealed.

Repeal

Sections 75-2901 to 75-2910 (Sec. 1921, 5th Div. Comp. Stat. 1887; Secs. 1920, 1924, Pol. C. 1895; Secs. 1 to 3, 5, 6, Ch. 45, L. 1903; Secs. 1100, 1101, 1103 to 1105, 1108, Ch. 76, L. 1913; Sec. 1, Ch. 4, L. 1919; Secs. 1 to 4, Ch. 75, L. 1921; Sec. 1, Ch. 61, L. 1949; Sec. 1, Ch. 53, L. 1955; Sec. 1, Ch. 39, L. 1959; Secs. 1 to 4, Ch. 58, L. 1961; Sec. 1, Ch. 58, L. 1961), relating to compulsory attendance, truant officers, and compulsory education of Indian children, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6301 et seq.

CHAPTER 30

JUVENILE DISORDERLY PERSONS— COMMITMENT TO INDUSTRIAL SCHOOL (Repealed—Section 16, Chapter 262, Laws of 1969)

75-3001, 75-3002. (1171, 1172) Repealed.

Repeal

Sections 75-3001, 75-3002 (Secs. 4, 6, Ch. 45, L. 1903; Sec. 1, Ch. 80, L. 1905; Secs. 1106, 1107, Ch. 76, L. 1913; Sec. 88, Ch. 199, L. 1965), relating to juvenile

disorderly persons and commitment of juveniles to state vocational school for girls or state industrial school, were repealed by Sec. 16, Ch. 262, Laws 1969.

CHAPTER 31

SCHOOLHOUSE SITES AND CONSTRUCTION

(Repealed-Section 27, Chapter 366, Laws of 1969; Section 496, Chapter 5, Laws of 1971)

75-3101 to 75-3125. (1173 to 1180) Repealed.

L. 1917; Sec. 30, Ch. 196, L. 1919; Sec. 1, Ch. 173, L. 1933; Secs. 1, 2, Ch. 257, L. 1947; Secs. 1 to 5, Ch. 240, L. 1965; Secs. Sections 75-3101 to 75-3125 (Secs. 1600) to 1607, Ch. 76, L. 1913; Sec. 1, Ch. 42,

1 to 12, Ch. 321, L. 1967), relating to schoolhouse sites and construction, were repealed by Sec. 27, Ch. 366, Laws 1969;

Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-8201 et seq.

CHAPTER 32

SCHOOL LIBRARIES

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-3201 to 75-3203. (1184 to 1186) Repealed.

Repeal

Sections 75-3201 to 75-3203 (Secs. 2003 to 2005, Pol. C. 1895; Secs. 1203 to 1205,

Ch. 76, L. 1913), relating to school libraries, were repealed by Sec. 496, Ch. 5, Laws 1971.

CHAPTER 33

SCHOOL BUSES—REQUIREMENTS—DRIVERS' QUALIFICATIONS—CONSTRUCTION AND OPERATION

(Repealed—Section 9, Chapter 189, Laws of 1951; Section 496, Chapter 5, Laws of 1971)

75-3301 to 75-3311. (1186.1 to 1186.7) Repealed.

Repeal

Sections 75-3301 to 75-3311 (Secs. 1 to 7, Ch. 18, L. 1933; Sec. 1, Ch. 16, L. 1939; Secs. 1, 2, Ch. 183, L. 1947; Secs. 1, 2, Ch. 61, L. 1953; Secs. 1, 2, Ch. 172, L. 1955; Sec. 1, Ch. 68, L. 1961; Sec. 4, Ch. 250,

L. 1965), relating to school buses, their construction and operation, and duties of bus drivers, were repealed by Sec. 9, Ch. 189, Laws 1951; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7001 et seq.

CHAPTER 34

TRANSPORTATION OF PUPILS

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-3401 to 75-3414. Repealed.

Repeal

Sections 75-3401 to 75-3414 (Secs. 1 to 14, Ch. 152, L. 1941; Secs. 1 to 3, Ch. 189, L. 1943; Sec. 1, Ch. 116, L. 1945; Sec. 1, Ch. 200, L. 1949; Sec. 1, Ch. 163, L. 1951; Secs. 2 to 8, Ch. 189, L. 1951; Sec. 4, Ch. 207, L. 1951; Sec. 1, Ch. 196, L. 1953; Sec. 1, Ch. 201, L. 1953; Sec. 1, Ch. 201, L. 1953; Sec. 1, Ch. 201, L. 1953; Sec. 1, Ch. 25, L. 1955; Sec. 1,

Ch. 105, L. 1955; Sec. 1, Ch. 191, L. 1955; Sec. 1, Ch. 202, L. 1957; Sec. 1, Ch. 126, L. 1961; Sec. 1, Ch. 215, L. 1961; Sec. 1, Ch. 242, L. 1961; Sec. 1, Ch. 106, L. 1963; Sec. 61, Ch. 247, L. 1963; Sec. 1, Ch. 74, L. 1965; Sec. 1, Ch. 243, L. 1967; Sec. 1, Ch. 179, L. 1969), relating to transportation of pupils, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7001 et seq.

CHAPTER 35

FREE TEXTBOOKS

(Repealed—Section 1, Chapter 79, Laws of 1961; Section 496, Chapter 5, Laws of 1971)

75-3501 to **75-3511**. (1198, 1199) Repealed.

Repeal L. 1917; Sec. 1, Ch. 65, L. 1921; Sec. Sections 75-3501 to 75-3511 (Secs. 1811, 1812, Ch. 76, L. 1913; Sec. 1, Ch. 12, L. 1941; Secs. 63, 64, Ch. 147, L. 1963;

FINANCE 75-3742

Sec. 33, Ch. 121, L. 1965), requiring free textbooks and relating to licensing of sellers and adoption of texts, were repealed by Sec. 1, Ch. 79, Laws 1961; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7601 et seq.

CHAPTER 36

UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS—STATE SUPPORT—SCHEDULE OF CONTRIBUTIONS

(Repealed—Section 23, Chapter 199, Laws of 1949; Section 496, Chapter 5, Laws of 1971)

75-3601 to 75-3612.3, 75-3613 to 75-3624. (1200.1 to 1200.9) Repealed.

Repeal

Sections 75-3601 to 75-3612.3, 75-3613 to 75-3624 (Secs. 1 to 9, Ch. 175, L. 1935; Sec. 1, Ch. 38, L. 1937; Sec. 1, Ch. 169, L. 1939; Secs. 1 to 3, 5 to 8, 16 to 22, Ch. 199, L. 1949; Sec. 1, Ch. 107, L. 1951; Sec. 1, Ch. 182, L. 1951; Sec. 1, Ch. 207, L. 1953; Sec. 1, Ch. 244, L. 1953; Sec. 1, Ch. 241, L. 1955; Sec. 1, Ch. 272, L. 1955; Sec. 1, Ch. 251, L. 1957; Sec. 1, Ch. 267, L. 1959; Sec. 1, Ch. 60, L. 1961; Sec. 1, Ch. 104, L. 1961; Sec. 4, Ch. 151, L. 1961; Secs. 1, 2, Ch. 230, L. 1961; Secs. 52 to 60, Ch. 147, L. 1963; Secs. 1 to 3, Ch. 265,

L. 1963; Secs. 4 to 9, Ch. 267, L. 1963; Sec. 1, Ch. 93, L. 1965; Sec. 1, Ch. 101, L. 1965; Secs. 1, Ch. 117, L. 1965; Secs. 2 to 4, Ch. 198, L. 1965; Sec. 1, Ch. 118, L. 1967; Sec. 7, Ch. 267, L. 1967; Secs. 2, 3, Ch. 317, L. 1967; Sec. 4, Ch. 3, Ex. L. 1969), requiring a uniform system of free public schools and relating to state equalization aid to schools under the foundation program, were repealed by Sec. 23, Ch. 199, Laws 1949; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6901 et seq.

CHAPTER 37

FINANCE

(Repealed—Chapter 50, Laws of 1947; Sections 23, 24, Chapter 199, Laws of 1949; Section 1, Chapter 75, Laws of 1961; Section 8, Chapter 184, Laws of 1961; Section 496, Chapter 5, Laws of 1971)

75-3701 to **75-3729.1**, **75-3730** to **75-3742**. (1201 to 1201.4, 1202 to 1218.6) Repealed.

Repeal

Sections 75-3701 to 75-3729.1, 75-3730 to 75-3742 (Secs. 44, 49, 50, pp. 630, 632, Cod. Stat. 1871; Sec. 1, p. 62, L. 1879; Secs. 1902, 1903, 1908, 1941 to 1947, 5th Div. Comp. Stat. 1887; Sec. 1, p. 56, L. 1893; Secs. 1880, 1891 to 1893, 1940, 1942 to 1948, Pol. C. 1895; Secs. 11, 1940a, pp. 133, 134, L. 1897; Secs. 1, 2, pp. 12, 13, L. 1901; Secs. 1, 2, Ch. 51, L. 1907; Secs. 2000 to 2002, 2004 to 2014, Ch. 76, L. 1913; Sec. 6, Ch. 81, L. 1917; Secs. 31 to 33, Ch. 196, L. 1919; Sec. 1, Ch. 4, L. 1921; Sec. 1, Ch. 253, L. 1921; Secs. 1, 2, Ch. 14, L. 1923; Sec. 1, Ch. 104, L. 1923; Sec. 1, Ch. 14, L. 1923; Sec. 1, Ch. 104, L. 1923; Sec. 1, Ch. 14, L. 1927; Sec. 1, Ch. 123, L. 1929; Sec. 1, Ch. 144, L. 1929; Sec. 1, Ch. 145, L. 1929; Sec. 1, Ch. 144, L. 1929; Sec. 1, Ch. 145, L. 1929; Sec. 1, Ch. 127, L. 1935; Sec. 1, Ch. 132, L. 1941; Sec. 1, Ch. 108, L. 1943; Sec. 1, Ch. 50,

L. 1945; Sec. 1, Ch. 51, L. 1945; Sec. 1, Ch. 129, L. 1945; Secs. 1 to 5, Ch. 131, L. 1945; Sec. 1, Ch. 28, L. 1947; Secs. 1 to 3, Ch. 161, L. 1947; Sec. 1, Ch. 272, L. 1947; Sec. 1, Ch. 273, L. 1947; Sec. 1, Ch. 281, L. 1947; Sec. 1, Ch. 54, L. 1949; Secs. 1, 2, Ch. 191, L. 1949; Sec. 11, Ch. 199, L. 1949; Secs. 1 to 4, Ch. 76, L. 1951; Sec. 1, Ch. 250, L. 1953; Secs. 1, 2, Ch. 62, L. 1961; Sec. 1, Ch. 221, L. 1961; Sec. 223, Ch. 147, L. 1963; Secs. 1, 11, Ch. 267, L. 1963; Secs. 5, Ch. 198, L. 1965; Secs. 1 to 5, Ch. 313, L. 1969; Sec. 3, Ch. 3, Ex. L. 1969), relating to school funds and financial administration of interlocal co-operative agreements, were repealed by Ch. 50, Laws 1947; Secs. 23, 24, Ch. 199, Laws 1949; Sec. 1, Ch. 75, Laws 1961; Sec. 8, Ch. 184, Laws 1961; Sec. 496, Ch. 5, Laws 1971. For present provisions, see secs. 75-6801 et seq., 75-7201 et seq. and 75-7301 et seq.

EXTRA TAXATION FOR SCHOOL PURPOSES (Repealed—Section 496, Chapter 5, Laws of 1971)

75-3801 to 75-3806. (1219 to 1223) Repealed.

Repeal

Sections 75-3801 to 75-3806 (Secs. 1 to 5, Ch. 93, L. 1917; Secs. 1, 2, Ch. 120, L. 1925; Secs. 1 to 3, Ch. 144, L. 1935; Sec. 1, Ch. 31, L. 1941; Sec. 12, Ch. 199, L. 1949; Sec. 1, Ch. 210, L. 1951; Sec. 2, Ch. 247, L. 1953; Sec. 1, Ch. 281, L. 1959;

Sec. 12, Ch. 267, L. 1963; Sec. 1, Ch. 85, L. 1967; Sec. 1, Ch. 140, L. 1967; Sec. 1, Ch. 168, L. 1969; Sec. 3, Ch. 268, L. 1969), relating to extra taxation for school purposes, were repealed by Sec. 496, Ch. 5, Laws 1971.

CHAPTER 39

BONDS

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-3901 to 75-3946. (1224.1 to 1224.32, 1227, 1231, 1243, 1252, 1253, 1254.1 to 1254.8) **Repealed.**

Repeal

Sections 75-3901 to 75-3946 (Secs. 4, 7, 9, pp. 65, 66, L. 1883; Secs. 2018, 2022, 2024, 2038, Ch. 76, L. 1913; Secs. 1, 2, Ch. 104, L. 1921; Secs. 1, Ch. 17, Ex. L. 1921; Secs. 1 to 7, Ch. 128, L. 1923; Secs. 1 to 32, Ch. 147, L. 1927; Sec. 1, Ch. 77, L. 1929; Sec. 1, Ch. 25, L. 1931; Sec. 1, Ch. 34, Ex. L. 1933; Sec. 1, Ch. 40, L. 1935; Sec. 1, Ch. 7, L. 1937; Sec. 1, Ch. 57, L. 1937; Secs. 1 to 7, Ch. 178, L. 1939; Sec.

1, Ch. 45, L. 1945; Sec. 1, Ch. 65, L. 1951; Sec. 1, Ch. 180, L. 1951; Sec. 1, Ch. 203, L. 1955; Sec. 19, Ch. 64, L. 1959; Sec. 1, Ch. 79, L. 1959; Sec. 1, Ch. 127, L. 1959; Secs. 9, 10, Ch. 260, L. 1959; Sec. 2, Ch. 223, L. 1961; Sec. 1, Ch. 54, L. 1967; Sec. 1, Ch. 273, L. 1967; Sec. 1, Ch. 103, L. 1969), relating to bonds, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7101 et seq.

CHAPTER 40

MANUAL AND INDUSTRIAL TRAINING

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-4001 to 75-4007. (1255 to 1261) Repealed.

Repeal

Sections 75-4001 to 75-4007 (Secs. 1 to 5, Ch. 131, L. 1911; Sec. 1700, Ch. 76, L. 1913), relating to manual and industrial

training, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7701 et seq.

CHAPTER 41

HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT— JOINT SCHOOL SYSTEMS

(Repealed—Section 1, Chapter 83, Laws of 1951; Section 9, Chapter 189, Laws of 1951; Section 3, Chapter 250, Laws of 1957; Section 496, Chapter 5, Laws of 1971)

75-4101 to 75-4120.3, 75-4121 to 75-4153. (1262.1 to 1262.51) Repealed.

Repeal

Sections 75-4101 to 75-4120.3, 75-4121 to 75-4153 (Secs. 1 to 51, Ch. 148, L. 1931;

Sec. 1, Ch. 9, L. 1933; Sec. 4, Ch. 16, L. 1933; Sec. 1, Ch. 156, L. 1933; Sec. 1, Ch. 110, L. 1937; Sec. 1, Ch. 75, L. 1939; Sec. 1,

Ch. 159, L. 1939; Sec. 3, Ch. 217, L. 1939; Sec. 1, Ch. 66, L. 1943; Sec. 1, Ch. 233, L. 1955; Sec. 1, Ch. 250, L. 1957; Sec. 1, Ch. 278, L. 1959; Sec. 1, Ch. 21, L. 1963; Secs. 1, 2, Ch. 152, L. 1963; Secs. 1 to 13, Ch. 261, L. 1963; Secs. 1 to 9, Ch. 37, L.

1965), relating to county, district and junior high schools, were repealed by Sec. 1, Ch. 83, Laws 1951; Sec. 9, Ch. 189, Laws 1951; Sec. 3, Ch. 250, Laws 1957; Sec. 496, Ch. 5, Laws 1971.

CHAPTER 42

HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION

(Repealed—Section 1, Chapter 106, Laws of 1951; Section 1, Chapter 318, Laws of 1969; Section 496, Chapter 5, Laws of 1971)

75-4201 to 75-4248. (1262.52 to 1262.81, 1262.83 to 1262.100) Repealed.

Repeal

Sections 75-4201 to 75-4248 (Secs. 52 to 81, 83 to 85, 95 to 110, Ch. 148, L. 1931; Sec. 1, Ch. 207, L. 1939; Sec. 4, Ch. 217, L. 1939; Sec. 1, Ch. 219, L. 1943; Secs. 1 to 3, Ch. 89, L. 1949; Sec. 1, Ch. 146, L. 1949; Secs. 1, 2, Ch. 106, L. 1951; Sec. 1, Ch. 22, L. 1953; Sec. 1, Ch. 43, L. 1955; Sec. 1, Ch. 70, L. 1955; Sec. 2, Ch. 21, L. 1963; Sec. 1, Ch. 162, L. 1963; Sec. 13, Ch.

267, L. 1963; Sec. 2, Ch. 127, L. 1965; Sec. 1, Ch. 262, L. 1965; Sec. 1, Ch. 254, L. 1967; Sec. 1, Ch. 315, L. 1969; Sec. 1, Ch. 317, L. 1969), relating to high schools and junior high schools, joint school systems, part-time schools and classes and vocational education, were repealed by Sec. 1, Ch. 106, Laws 1951; Sec. 1, Ch. 318, Laws 1969; Sec. 496, Ch. 5, Laws 1971.

CHAPTER 43

DESIGNATION OF HIGH SCHOOLS AS VOCATIONAL TRAINING CENTERS

(Repealed—Section 14, Chapter 250, Laws of 1969; Section 496, Chapter 5, Laws of 1971)

75-4301 to 75-4323. Repealed.

Repeal

Section 75-4301 to 75-4323 (Secs. 1 to 7, Ch. 160, L. 1939; Secs. 1, 2, Ch. 77, L. 1963; Sec. 1, Ch. 211, L. 1967; Secs. 2 to 8, Ch. 254, L. 1967; Sec. 1, Ch. 224, L. 1969; Secs. 1 to 13, Ch. 250, L. 1969; Sec. 1, Ch. 357, L. 1969), relating to high

schools as vocational training centers and post-secondary vocational-technical education, were repealed by Sec. 14, Ch. 250, Laws 1969; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7701 et seq.

CHAPTER 44

JUNIOR COLLEGES—ESTABLISHMENT BY COUNTY OR DISTRICT HIGH SCHOOL BOARDS

(Repealed—Section 20, Chapter 274, Laws of 1965; Section 496, Chapter 5, Laws of 1971)

75-4401 to 75-4430. Repealed.

Reneal

Sections 75-4401 to 75-4430 (Secs. 1 to 12, Ch. 158, L. 1939; Sec. 1, Ch. 173, L. 1953; Secs. 1 to 18, Ch. 274, L. 1965; Sec. 1, Ch. 229, L. 1969; Sec. 1, Ch. 235, L. 1969; Sec. 1, Ch. 235, L. 1969; Sec. 1, Ch. 325, L. 1969), relating to

junior colleges and community college districts, were repealed by Sec. 20, Ch. 274, Laws 1965; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-8101 et seq.

HIGH SCHOOL BUDGET ACT

(Repealed—Section 24, Chapter 199, Laws of 1949; Section 1, Chapter 106, Laws of 1951; Section 8, Chapter 151, Laws of 1961; Section 16, Chapter 267, Laws of 1963; Section 496, Chapter 5, Laws of 1971)

75-4501 to 75-4516.2, 75-4517 to 75-4518.1, 75-4519 to 75-4540. (1263.1 to 1263.31) Repealed.

Repeal

Sections 75-4501 to 75-4516.2, 75-4517 to 75-4518.1, 75-4519 to 75-4540 (Secs. 1 to 31, Ch. 178, L. 1933; Sec. 1, Ch. 151, L. 1935; Sec. 1, Ch. 166, L. 1939; Sec. 5, Ch. 217, L. 1939; Secs. 1, 2, Ch. 64, L. 1941; Sec. 1, Ch. 131, L. 1941; Sec. 1, Ch. 122, L. 1943; Sec. 2, Ch. 219, L. 1943; Sec. 1, Ch. 192, L. 1943; Sec. 1, Ch. 192, L. 1943; Sec. 1, Ch. 192, L. 1945; Secs. 1 to 4, Ch. 133, L. 1945; Secs. 1 to 5, Ch. 135, L. 1945; Sec. 1, Ch. 280, L. 1947; Sec. 2, Ch. 146, L. 1949; Secs. 1 to 15, Ch. 199, L. 1949; Secs. 4, 5, Ch.

182, L. 1951; Secs. 3, 4, Ch. 208, L. 1951; Sec. 1, Ch. 202, L. 1953; Sec. 1, Ch. 25, L. 1961; Sec. 4, Ch. 62, L. 1961; Secs. 5 to 7, 1961; Sec. 4, Ch. 02, L. 1961; Secs. 5 to 7, Ch. 151, L. 1961; Secs. 1, 2, Ch. 246, L. 1961; Secs. 14, 15, Ch. 267, L. 1963; Secs. 4 to 6, Ch. 147, L. 1965; Secs. 6, 7, Ch. 198, L. 1965; Secs. 2, 5, Ch. 3, Ex. L. 1965), relating to high school budgets, were repealed by Sec. 24, Ch. 199, Laws 1949; Sec. 1, Ch. 106, Laws 1951; Sec. 8, Ch. 151, Laws 1961, Sec. 16, Ch. 267, Laws Ch. 151, Laws 1961; Sec. 16, Ch. 267, Laws 1963; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-6701 et seq.

CHAPTER 46

HIGH SCHOOL DISTRICTS—PUBLIC WORKS

(Repealed-Chapter 120, Laws of 1953; Section 496, Chapter 5, Laws of 1971)

75-4601 to 75-4614. Repealed.

Repeal

Sections 75-4601 to 75-4614 (Secs. 1 to 6, Ch. 275, L. 1947; Secs. 1 to 5, Ch. 130, L. 1949; Secs. 1 to 3, Ch. 188, L. 1951; L. 1949; Secs. 1 to 3, Ch. 188, L. 1951; Sec. 1, Ch. 120, L. 1953; Sec. 1, Ch. 237, L. 1953; Sec. 1, Ch. 236, L. 1955; Sec. 1, Ch. 67, L. 1957; Sec. 1, Ch. 147, L. 1959; Sec. 1, Ch. 167, L. 1959; Sec. 1, Ch. 151, L. 1961; Sec. 1, Ch. 163, L. 1961; Sec. 1, Ch. 169, L. 1961; Sec. 1, Ch. 222, L. 1963; Sec. 1, Ch. 140, L. 1965; Sec. 1, Ch. 166, L. 1965; Secs. 1 to 3, Ch. 211, L. 1965; Sec. 1, Ch. 214, L. 1965; Sec. 1, Ch. 311, L. 1967), relating to undertaking of public works programs by high schools and authorizing joint high school districts, were repealed by Ch. 120, Laws 1953; Sec. 496, Ch. 5, Laws 1971. For present provisions, see secs. 75-6525, 75-6526.

CHAPTER 47

DEFINITIONS AND GENERAL PROVISIONS

(Repealed-Section 63, Chapter 2, Laws of 1971; Section 496, Chapter 5, Laws of 1971)

(1323 to 1327.2, 1328, 1329) Repealed. 75-4701 to 75-4709.

Repeal

Sections 75-4701 to 75-4709 (Secs. 2025 to 2028, Pol. C. 1895; Secs. 2200 to 2207, Ch. 76, L. 1913; Secs. 1, 2, Ch. 19, L. 1931), relating to definitions and general provisions including the oath of office, were repealed by Sec. 63, Ch. 2, Laws 1971; Sec. 496, Ch. 5, Laws 1971. For present provisions, see secs. 75-8301 to 75-8304.

CHAPTER 48

SCHOOL LUNCH AND CHILD NUTRITION PROGRAM (Repealed—Section 496, Chapter 5, Laws of 1971)

75-4801 to 75-4809. Repealed.

Sections 75-4801 to 75-4809 (Secs. 1 to 8, Ch. 282, L. 1947; Sec. 1, Ch. 209, L. 1961; Sec. 65, Ch. 147, L. 1963; Secs. 1 to 4,

Ch. 123, L. 1967), relating to the school lunch program, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-8001 et seq.

WESTERN REGIONAL HIGHER EDUCATION COMPACT

Section 75-4901. Western regional higher education compact approved.

Effective date—notice of approval.

Authority of Western Interstate Commission for Higher Education
to make agreements for placement of students.

75-4904. Form and contents of agreements.
75-4905. State obligations or rights under compact not altered.

75-4901. Western regional higher education compact approved. The legislative assembly of the state of Montana hereby approves, ratifies and adopts the "Western Regional Higher Education Compact" approved by the Western Governors' Conference meeting at Denver, Colorado, on November tenth, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACT ARTICLE I

WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, it is believed that the western states, or groups of such states within the region, co-operatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof:

NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful co-operation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the Western Interstate Commission for Higher Education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

The commission shall consist of three (3) resident members from each compacting state or territory. At all times one (1) commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each commissioner shall be four (4) years; provided, however, that the first three (3) commissioners shall be appointed as follows: one (1) for two (2) years, one (1) for three (3) years, and one (1) for four (4) years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the commission is entitled to one (1) vote.

ARTICLE VI

The commission shall elect from its number a chairman and a vice-chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents, and employees as may be required to carry out the purpose of this compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

The commission may elect such committees as it deems necessary for the carrying out of its functions.

The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

On or before the fifteenth day of January of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

· For this purpose the commission may enter into contractual agreements:

- (a) With the governing authority of any educational institution in the region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties, and
- (b) With the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission

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shall draft and recommend to the governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the region.

For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two (2) years after written notice thereof by the governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

Unless such default shall be remedied within a period of two (2) years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the commission.

History: En. Sec. 1, Ch. 216, L. 1951.

75-4902. Effective date—notice of approval. Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification and adoption of said compact by the thirty-second legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

History: En. Sec. 2, Ch. 216, L. 1951.

75-4903. Authority of Western Interstate Commission for Higher Education to make agreements for placement of students. The Western Interstate Commission for Higher Education is authorized to act on behalf of this state in making arrangements for the placement of students in institutions and programs of higher learning outside the states which are parties to the compact for establishing the commission. For that purpose, the commission may negotiate and enter into arrangements and contracts with this state or any appropriate agency thereof, with public and private educational institutions and agencies, and with states and other governmental entities. Such arrangements and contracts may provide for the obtaining of one or more places for students on either a special or continuing basis; the payment of partial or full tuition and other charges; and the furnishing of reciprocal, compensating or other advantages and benefits in support of the educational program involved.

History: En. Sec. 1, Ch. 128, L. 1971.

75-4904. Form and contents of agreements. The authority conferred by section 75-4903 shall be exercised only pursuant to written agreement between an agency of this state having responsibility for or duties with respect to programs for assisting residents of this state to obtain higher education. Any such agreements shall include provisions for the payment of tuition and any other costs, and no such agreement shall be made which commits this state or any agency or officer thereof to any obligation for which funds have not been appropriated or otherwise made available in accordance with law.

History: En. Sec. 2, Ch. 128, L. 1971.

75-4905. State obligations or rights under compact not altered. Nothing contained in this act shall be construed to alter any of the obligations or restrict or impair any rights which this state may have under the compact establishing the commission.

History: En. Sec. 3, Ch. 128, L. 1971.

EDUCATION CLASSES FOR MENTALLY RETARDED AND PHYSICALLY HANDICAPPED CHILDREN

(Repealed—Section 496, Chapter 5, Laws of 1971)

75-5001 to 75-5007. Repealed.

Repeal

Sections 75-5001 to 75-5007 (Secs. 1 to 7, Ch. 206, L. 1955; Sec. 1, Ch. 108, L. 1959; Sec. 1, Ch. 41, L. 1961; Secs. 1, 2, Ch. 243, L. 1963; Sec. 1, Ch. 96, L. 1965; Sec. 1, Ch. 142, L. 1965; Secs. 1, 2, Ch. 163,

L. 1967; Sec. 1, Ch. 164, L. 1967; Sec. 2, Ch. 183, L. 1969), relating to special education for handicapped children, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7801 et seq.

CHAPTER 51

FEDERAL AID

(Repealed—Section 242, Chapter 147, Laws of 1963; Section 496, Chapter 5, Laws of 1971)

75-5101, 75-5102. Repealed.

Repeal

Sections 75-5101, 75-5102 (Secs. 1, 2, Ch. 173, L. 1957; Sec. 67, Ch. 147, L. 1963; Sec. 1, Ch. 282, L. 1965), relating to fed-

eral aid, were repealed by Sec. 242, Ch. 147, Laws 1963; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7303.

CHAPTER 52

LAW ENFORCEMENT ACADEMY

Section 75-5201. Act, how cited.

75-5202. Purpose.

75-5203. Establishment of Montana law enforcement academy.

75-5204. Eligibility.

75-5205. Advisory board.

75-5206. Powers and duties of the Montana law enforcement academy advisory board.

75-5207. Rights of officers attending academy.

75-5208. Expenditure of funds.

75-5201. Act, how cited. This act may be cited as the "Montana Law Enforcement Academy Act."

History: En. Sec. 1, Ch. 7, L. 1959.

75-5202. Purpose. The purpose of this act shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers with a means of securing additional training in the field of law enforcement.

History: En. Sec. 2, Ch. 7, L. 1959.

75-5203. Establishment of Montana law enforcement academy. There is hereby established a Montana law enforcement academy to be located at one of the units of the university of Montana, which unit shall be

selected in the manner hereinafter provided. This academy shall be in session for a period to be annually determined by the advisory board.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967.

75-5204. Eligibility. All bona fide Montana law enforcement officers shall be eligible to apply for admission to this academy.

History: En. Sec. 4, Ch. 7, L. 1959.

75-5205. Advisory board. The Montana law enforcement academy shall be governed by an advisory board composed of one representative of each of the following organizations or departments to be appointed by the president, chief executive or officer in charge of each of the following departments or organizations: The Montana sheriffs and peace officers association, the Montana chiefs of police association, the county attorneys association, the attorney general's office, the Montana municipal league, the Montana county commissioners association, the Federal Bureau of Investigation, the Montana police protective association, the Montana highway patrol, the Montana fish and game commission, the Montana livestock commission, the tribal police of one of the Indian reservations located in Montana, and that unit of the university of Montana selected as a site for the academy. The representative appointed by the Montana livestock commission shall be a duly appointed stock inspector or detective. The tribal policeman serving on the advisory board each year will be a member of the reservation that is designated for representation by a majority of the advisory board. The representative of the university unit shall be selected after the site has been determined by the other members of the Montana law enforcement academy advisory board. The members of the advisory board shall be appointed for a term of one year and shall serve without compensation.

History: En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961; amd. Sec. 1, Ch. 88, L. 1969.

Cross-Reference

Advisory board abolished and functions transferred, sec. 82A-1202(4).

75-5206. Powers and duties of the Montana law enforcement academy advisory board. The Montana law enforcement academy advisory board shall have the power and it shall be its duty to:

- 1. Establish rules and regulations for the government and conduct of the advisory board.
- 2. Choose a site for the Montana law enforcement academy at the unit of the university system of Montana which in the determination of the board is best suited for the needs of the academy.
 - 3. Establish qualifications for admission to the academy.
- 4. Select from among the qualified applicants those officers who are to attend the academy each year.
- 5. Determine the curriculum and methods of training for the officers attending the academy.
- 6. Select and hire such staff as it deems necessary to implement this act.
 - 7. Establish rules for the conduct of the officers at the academy.

- 8. Award appropriate certificates to the officers who successfully complete their training; which certificate shall be signed by the president of the selected university unit.
- 9. Provide for the keeping of permanent records of enrollment, attendance, graduation and such other records as the board may deem necessary.
- 10. Make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state of the state of Montana.
- 11. Do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this act or the constitution and statutes of the state of Montana.
- 12. Accept and expend grants from federal, state, county and city governments or private persons, associations or corporations.

History: En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967; amd. Sec. 1, Ch. 331, L. 1971.

75-5207. Rights of officers attending academy. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority or other rights by reason of attendance at the academy.

History: En. Sec. 7, Ch. 7, L. 1959.

75-5208. Expenditure of funds. The expenditure of funds by any city, town, municipality or county for the board, room and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967.

CHAPTER 53

DRIVER EDUCATION

(Repealed—Section 12, Chapter 214, Laws of 1969; Section 496, Chapter 5, Laws of 1971)

75-5301 to 75-5317. Repealed.

Repeal

Sections 75-5301 to 75-5317 (Secs. 1 to 9, Ch. 226, L. 1965; Secs. 1 to 8, Ch. 214, L. 1969), relating to driver education, were

repealed by Sec. 12, Ch. 214, Laws 1969; Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-7901 et seq.

CHAPTER 54

SCHOOL SAFETY PATROLS

(Repealed-Section 496, Chapter 5, Laws of 1971)

75-5401 to 75-5405. Repealed.

Repeal

Sections 75-5401 to 75-5405 (Secs. 1 to 5, Ch. 170, L. 1965), relating to school

safety patrols, were repealed by Sec. 496, Ch. 5, Laws 1971. For present provisions, see sec. 75-8310.

SCHOOL DISTRICTS FOR NONSECTARIAN CHILD CARE INSTITUTIONS (Repealed-Section 496, Chapter 5, Laws of 1971)

75-5501 to 75-5508. Repealed.

Repeal

Sections 75-5501 to 75-5508 (Secs. 1 to 8, Ch. 105, L. 1965), relating to nonsectarian child care institutions, were repealed by Sec. 496, Ch. 5, Laws 1971.

CHAPTER 56

BOARD OF EDUCATION

Section 75-5601. Definition. 75-5602. Membership.

Officers and quorum. 75-5603.

75-5604. Meetings.

75-5605. Per diem and expenses. 75-5606. Ex officio regents. 75-5607. Powers and duties. 75-5608. Other powers and duties.

75-5601. Definition. As used in this Title, unless the context clearly indicates otherwise, "board of education" means the state board of education established under the provisions of section 11, article XI of the constitution of the state of Montana.

History: En. 75-5601 by Sec. 2, Ch. 5, L. 1971.

- 75-5602. Membership. The board of education shall have eleven (11) members, among whom the governor, the attorney general, and the superintendent of public instruction shall serve as ex officio members. The remaining eight (8) members shall be appointed by the governor with the advice and consent of the senate. Such appointments shall be subject to the following limitations:
- they shall be equally divided among the congressional districts of the state of Montana;
- not more than four (4) shall be affiliated with the same political party or organization;
- their terms shall be eight (8) years and, except in the case of a vacancy, only one (1) member shall be appointed each year; and
- when a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and such appointments to fill vacancies shall preserve the balance required by subsections (1) and (2) above.

An appointed member of the board of education shall take and subscribe to the constitutional oath of office prescribed for civil officers and file it with the secretary of state before he shall have the capacity to act as a member of the board. He shall serve as a member of the board of education until his successor has been appointed and qualified.

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(5) When the board is meeting to consider subjects relating to the university system of Montana there shall be an additional nonvoting member who shall be the students' representative member of the board. This students' representative member shall be one (1) of the student body presidents of the six (6) units of the university system and he shall be elected for a one (1) year term by a majority of the student body presidents. His term shall be from July 1 of the first year to June 30 of the following year. The students' representative member shall receive the same compensation as any other member and shall have the same rights as any other member of the board except as provided by this subsection.

History: En. 75-5602 by Sec. 3, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1971.

NOTE.—When governor makes appointment of a member to state board of education to fill vacancy during recess of senate, such appointee holds office until next meeting of senate. Opinions Attorney General, Vol. 19, Opinion 40.

Cross-References

Congressional districts, sec. 43-107. Constitutional oath, Const., art. XIX, sec. 1; sec. 59-413. Manner of taking oath, sec. 75-8304.

Collateral References

Schools and School Districts \$\infty 47.
78 C.J.S. Schools and School Districts \$\§ 86, 87.
47 Am. Jur. 317, Schools, \§ 30.

75-5603. Officers and quorum. The governor shall serve as the president of the board of education and the superintendent of public instruction shall serve as its secretary. The state treasurer shall act as treasurer to the board. In addition, the board may select an appointed member to chair its meetings in the absence of the governor.

A majority of the board of education membership shall constitute a quorum for the transaction of business.

History: En. 75-5603 by Sec. 4, Ch. 5, L. 1971.

75-5604. Meetings. The board of education shall hold at least quarterly meetings on the second Monday of April, July, September and December. Such meetings shall be held at the state capitol or at a unit of the Montana university system.

Special meetings of the board of education may be called by the board, or by the president and secretary of the board, at any time and place, if in their judgment necessity requires such a meeting.

The secretary of the board shall notify all members of all regular and special meetings.

History: En. 75-5604 by Sec. 5, Ch. 5, Collateral References
L. 1971. 47 Am. Jur. 321, Schools, § 38.

75-5605. Per diem and expenses. Each appointed member of the board of education shall receive twenty dollars (\$20) per day and his necessary and actual expenses incurred for each day in attendance at the meetings of such board or in the performance of any duty or services as a member of such board. All such expenses and per diem shall be paid from the appropriations made by the legislative assembly for the support of the board of education or the Montana university system, whichever is applicable.

History: En. 75-5605 by Sec. 6, Ch. 5, Collateral References L. 1971.

Schools and School Districts 47. 78 C.J.S. Schools and School Districts

75-5606. Ex officio regents. The board of education shall serve ex officio as the regents of the Montana university system. As the regents, they shall have the power and shall perform all duties prescribed by the higher education provisions of this title. All such duties shall be performed in the name of the regents of the Montana university system.

History: En. 75-5606 by Sec. 7, Ch. 5, L. 1971.

Cross-References

Powers and duties of board as ex officio regents, sec. 75-8501.

Units constituting university system, sec. 75-8403.

75-5607. Powers and duties. The board of education shall have the power and it shall be its duty to:

- effect an orderly and uniform system of teacher certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by sections 75-6002 and 75-6011;
- consider the suspension or revocation of teacher certificates, and appeals from the denial of teacher certification in accordance with the provisions of section 75-6010:
- administer and order the distribution of state equalization aid in accordance with the provisions of section 75-6917;
- adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of section 75-7004;
- approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of section 75-7403;
- (6) adopt policies prescribing the conditions when school may be conducted on Saturday, and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of sections 75-7404 and 75-7405:
- (7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of sections 75-7501 and 75-7502;
- establish the scope of conservation education in the schools in accordance with the provisions of section 75-7509;
- approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of section 75-7511;
- (10) as the governing board of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of section 75-7702;
- (11) consider applications for post-secondary vocational-technical center designation in accordance with the provisions of section 75-7707;
- for the purposes of post-secondary vocational-technical centers, approve or disapprove programs and budgets, direct the distribution of

moneys in support of such budgets, determine tuition rates and fees, enter into lease agreements or real property purchases in accordance with the post-secondary vocational-technical center provisions of the vocational education chapter of this Title;

- (13) adopt policies for the conduct of special education in accordance with the provisions of section 75-7802;
- (14) supervise community college districts in accordance with the provisions of sections 75-8103 and 75-8119;
- (15) call an election, determine the results of the election, order and implement the organization of a community college district in accordance with the community college districts chapter of this Title; and
- (16) perform any other duty prescribed from time to time by this Title or any other act of the legislature.

History: En. 75-5607 by Sec. 8, Ch. 5, L. 1971.

Cross-References

Board as head of department of education, sec. 82A-501.

Functions continued in board of educa-

tion, sec. 82A-506.

Recreational programs and parks, authority of board where school property utilized, sec. 62-214.

State school for deaf and blind, duties of board, sec. 80-101 et seq.

Collateral References

Schools and School Districts 27. 78 C.J.S. Schools and School Districts § 90. 47 Am. Jur. 324-326, Schools, §§ 42-44.

75-5608. Other powers and duties. The board of education shall have the power and it shall be its duty to:

- (1) adopt rules and regulations, not inconsistent with the constitution or laws of the state of Montana, necessary for its own government or the proper execution of the powers and duties conferred upon it by law;
 - adopt and use an official seal to authenticate its official acts;
 - keep a record of its proceedings; and
- submit a written report to the governor of its activities during the immediately preceding fiscal biennium in accordance with the provisions of section 82-4002, R. C. M., 1947.

History: En. 75-5608 by Sec. 9, Ch. 5, L. 1971.

Actions Ex Contractu against Board of Education

Board of education may be sued for a breach of contract without consent of state to the action. Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

Collateral References

Schools and School Districts 27. 78 C.J.S. Schools and School Districts § 90.

47 Am. Jur. 326, Schools, § 45.

CHAPTER 57

SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-5701. Definition.

75-5702. Election and qualification. 75-5703. Term, oath and vacancy.

75-5704. Staff.

75-5705. Discretionary staff.

75-5706. Administrative powers and duties.
75-5707. Powers and duties.
75-5708. School census and interest and income distribution.

75-5709.

Controversy appeal.

Educational television—superintendent as co-ordinator.

75-5711. Educational television—advisory committee.

75-5701. Definition. As used in this Title, unless the context clearly indicates otherwise, "superintendent of public instruction" means that state government official designated as a member of the executive department by section 1 of article VII of the constitution of Montana.

History: En. 75-5701 by Sec. 10, Ch. 5, L. 1971.

Election and qualification. A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of superintendent of public instruction who:

- has attained the thirtieth anniversary of his birth date at the time of his election:
- has resided within the state for the two (2) years next preceding his election:
- holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of education for teacher certification purposes; and
- otherwise possesses the qualifications for such office which are required by the constitution of the state of Montana.

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971.

Cross-Reference

Mileage of officers, secs. 59-801, 59-802.

Collateral References

Schools and School Districts 47. 78 C.J.S. Schools and School Districts § 86. 47 Am. Jur. 316 et seq., Schools, § 29 et seq.

Term, oath and vacancy. The superintendent of public instruction shall hold office at the seat of government for the term of four (4) years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

If the office of superintendent of public instruction becomes vacant, it shall be filled in the manner prescribed by the constitution of the state of Montana.

History: En. 75-5703 by Sec. 12, Ch. 5, L. 1971.

Manner of taking oath, sec. 75-8304. Vacancy in office, how filled, Const., art. VII, sec. 7; sec. 59-607.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Staff. The superintendent of public instruction shall have the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction shall employ:

- (1) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;
- (2) a professional staff for the state supervision and administration of vocational education in accordance with the provisions of section 75-7703; and
- (3) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field of special education for the mentally retarded or physically handicapped, and who has not less than two years experience in special education.

History: En. 75-5704 by Sec. 13, Ch. 5, L. 1971.

75-5705. Discretionary staff. In addition to the positions of employment listed in section 75-5704, the superintendent of public instruction may employ:

(1) one (1) or more assistant superintendents, one of whom may be designated, with the approval of the board of education, as assistant superintendent for vocational education;

(2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;

(3) an elementary supervisor who is the holder of a valid teacher certificate:

(4) a competent person to develop economy and efficiency in school transportation, and to otherwise supervise the transportation program;

- (5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than five (5) years of teaching experience;
- (6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and
- (7) any other supervisors or assistants as may be required to carry out the duties of his office.

History: En. 75-5705 by Sec. 14, Ch. 5, T. 1971.

- 75-5706. Administrative powers and duties. In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:
- (1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;
- (2) preserve all books, educational media, instructional equipment and any other articles of educational interest and value which come into his possession, and surrender them to his successor at the expiration of his term;

- (3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this Title;
- (4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;
- (5) whenever he deems necessary but not more than once every four (4) years, cause the printing of a complete and updated volume of the school laws of the state which shall be offered and sold at cost of the printing and shipping to any school official or other person;
- (6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislative assembly at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person;
- (7) submit a written report to the governor of his activities during the immediately preceding fiscal biennium in accordance with the provisions of section 82-4002, R. C. M., 1947;
- (8) if deemed necessary, publish a biennial report of the superintendent of public instruction, as prescribed by section 82-4002, R. C. M., 1947;
- (9) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, shall give a county superintendent a written answer to any question concerning school law;
- (10) call an annual meeting of the county superintendents when he deems it advisable;
- (11) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and
- (12) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

History: En. 75-5706 by Sec. 15, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$\infty\$ C.J.S. Schools and School Districts \$90.

47 Am. Jur. 324, Schools, § 42.

- 75-5707. Powers and duties. The superintendent of public instruction shall have the general supervision of the public schools and districts of the state, and he shall have the power and shall perform the following duties or acts in implementing asd enforcing the provisions of this Title:
- (1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of section 75-5929;
- (2) issue, renew or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of education in accordance with the provisions of the teacher certification chapter of this Title;
- (3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of section 75-6318;
- (4) pay the tuition for the residents of the Montana children's center at Twin Bridges high school in accordance with the provisions of section 75-6319;

- (5) serve on the teachers' retirement board in accordance with the provisions of section 75-6203;
- (6) prescribe absentee voting forms and rules in accordance with the provisions of section 75-6416;
- (7) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of section 75-6528;
- (8) approve or disapprove the opening or reopening of a school in accordance with the provisions of sections 75-6602, 75-6603, 75-6604, or 75-6605;
- (9) approve or disapprove school isolation within the limitations prescribed by section 75-6608;
- (10) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of section 75-6702, and prescribe the school budget format in accordance with the provisions of section 75-6704 and 75-7209;
- (11) establish a system of communication for calculating joint district revenues in accordance with the provisions of section 75-6721;
- (12) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in section 75-6725, and publish rules and regulations for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of section 75-6729;
- (13) generally supervise the school financial administration provisions as prescribed by section 75-6802;
- (14) appoint the responsible county officials for the performance of the budgeting duties and the financial administration duties for a joint district in accordance with the provisions of sections 75-6720 and 75-6803;
- (15) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of subsection (5) of section 75-6806, and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of section 75-5809;
- (16) approve, disapprove or adjust an increase of the average number belonging (ANB) in accordance with the provisions of sections 75-6903 and 75-6904;
- (17) distribute state interest and income moneys and state equalization aid in support of the foundation program in accordance with the provisions of sections 75-6908, 75-6918, and 75-6919;
- (18) estimate the state-wide per census child payment for the state interest and income moneys and the state equalization level for the foundation program in accordance with the provisions of sections 75-6911 and 75-6920;
- (19) distribute state impact aid in accordance with the provisions of section 75-6925;
- (20) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of section 75-7005;

- (21) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of section 75-7207;
- (22) request, accept, deposit and expend federal moneys in accordance with the provisions of section 75-7303;
- (23) authorize the use of federal moneys for the support of an interlocal co-operative agreement in accordance with the provisions of sections 75-7306 and 75-7307:
- (24) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of section 75-7308;
- (25) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of sections 75-7404 and 75-7405;
- (26) recommend standards of accreditation for all schools to the board of education, and evaluate compliance with such standards and recommend accreditation status of every school to the board of education in accordance with the provisions of sections 75-7501 and 75-7502;
- (27) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of sections 75-7505 and 75-7506;
- (28) recommend the scope of conservation education in the schools to the board of education in accordance with the provisions of section 75-7509;
- (29) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of section 75-7511;
- (30) license textbook dealers, maintain a textbook library, initiate prosecution of textbook dealers violating the law, and supply a textbook listing in accordance with the provisions of the textbooks chapter of this Title;
- (31) administer and perform the duties as the executive officer of the board of education for vocational education in accordance with the provisions of section 75-7703;
- (32) consider applications for the designation of a post-secondary vocational-technical center in accordance with the provisions of section 75-7707;
- (33) establish a fund for the handling of post-secondary vocationaltechnical center fees in accordance with the provisions of section 75-7714;
- (34) supervise and co-ordinate the conduct of special education in the state in accordance with the provisions of section 75-7803;
- (35) administer the traffic education program in accordance with the provisions of section 75-7904;
- (36) administer the school fund services program in accordance with the provisions of sections 75-8002, 75-8003, and 75-8004;
- (37) determine the result of an organization election for a community college district and the related election of trustees in accordance with the provisions of section 75-8112;

- (38) review school building plans and specifications in accordance with the provisions of section 75-8206;
- (39) publish and distribute fire danger books in accordance with the provisions of section 75-8309;
- (40) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of section 75-8310; and
- (41) perform any other duty prescribed from time to time by this Title, any other act of the legislature, or the policies of the board of education

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971.

Cross-Reference

State board of land commissioners, membership on, Const., Art. XI, sec. 4.

Collateral References

Schools and School Districts 47.
78 C.J.S. Schools and School Districts
90.
47 Am. Jur. Schools, 324 et seq., 360
et seq., § 42 et seq., § 89 et seq.

75-5708. School census and interest and income distribution. When the superintendent of public instruction receives the school census and undersix-years-old census reports from a county superintendent, he shall examine both census reports to determine any errors or duplicate entries between districts, especially districts located in separate counties. Whenever an error or duplication is discovered, he shall notify the county superintendent or county superintendents of such error or duplication. Each county superintendent shall explain the inclusion of such child on a district's report and the superintendent of public instruction shall include or delete the name of the child on the basis of the explanation. If a county superintendent does not reply in less than fifteen (15) days, the superintendent of public instruction shall delete the name of the child he has questioned.

After the superintendent of public instruction has completed a review of all the district census reports and tabulated the state-wide total of these reports, he shall distribute the state interest and income moneys on the basis of the school census reports of the children who are six (6) years of age or older but who have not yet reached their twenty-first birthday under the provisions of sections 75-6908 and 75-5936.

History: En. 75-5708 by Sec. 17, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts §§ 21, 86.
47 Am. Jur. 361, Schools, § 90.

Collateral References

Schools and School Districts 19(1), 47.

75-5709. Controversy appeal. The superintendent of public instruction shall decide matters of controversy when they are appealed from:

- (1) a decision of a county superintendent rendered under the provisions of section 75-5811; or
- (2) a decision of a county transportation committee rendered under the provisions of section 75-7015.

The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county

superintendent or county transportation committee, documents presented at the hearing, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to adjudication or the proper legal remedies in the state courts.

In order to establish a uniform method of hearing and determining matters of controversy arising under this Title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971.

Correspondence with County Superintendent

An informal letter written by the superintendent of public instruction to a county superintendent based on correspondence between them relative to an order of the latter abolishing a school district and approving his action did not debar the state superintendent from thereafter passing upon the same question when presented upon a formal appeal from the county superintendent's decision. State ex rel. School District No. 86 v. Trumper, 69 M 468, 477, 222 P 1064.

Exhaustion of Administrative Remedy Required

Where plaintiff teacher was dismissed by the board of school trustees and appealed the action of the board to the county superintendent, but failed to appeal the county superintendent's unfavorable decision to the superintendent of public instruction, plaintiff failed to exhaust remedies afforded by law and, since there was nothing in the record to show abuse of discretion on the part of school authorities, plaintiff was barred from court action against the school district for breach of contract. Kelsey v. School District No. 25, 84 M 453, 459, 276 P 26, distinguished in 88 M 110, 115, 290 P 252, explained in 114 M 488, 499, 138 P 2d 569.

Judicial Review

While the state superintendent of public instruction has the power to "decide all appeals from the decisions of the county superintendent," his decision is subject to "adjudication or proper legal remedies in the state courts." Potter v. Miller, 145 M 197, 399 P 2d 994.

Jurisdiction

In the absence of an affirmative showing of want of jurisdiction in the superintendent of public instruction on appeal from a decision of a county superintendent, jurisdiction and regularity of the proceedings will be presumed, and so long as the former acts legally and within the powers expressly conferred courts will not interfere by certiorari. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

Where an order of a board of trustees dismissing a district school superintendent for cause was void because he had not been granted a hearing (a well-defined public policy declared by decisions of the supreme court), which order was reversed on appeal to the county superintendent, whereupon the board appealed to the state superintendent of instruction who found in favor of the board, the action of the board and the decision of the state superintendent were void for want of jurisdiction and certiorari would be granted. State ex rel. Howard v. Ireland, 114 M 488, 501, 138 P 2d 569.

Undue Hardship on Parents

Where state superintendent approved county superintendent's attachment of abandoned territory to a contiguous district rather than to another more convenient one, thus requiring children to travel fourteen miles farther each way to get to more overcrowded schools and worked an "undue hardship" on both parents and children, this constituted sufficient facts for appeal from state superintendent's decision. Potter v. Miller, 145 M 197, 399 P 2d 994.

Collateral References

Estoppel doctrine as applicable against government and its governmental agencies. 1 ALR 2d 338.

75-5710. Educational television—superintendent as co-ordinator. The superintendent of public instruction shall be the co-ordinator of educational television and shall:

- (1) Contact all public educational institutions including universities, colleges, elementary and secondary schools, vocational schools, and community colleges and assess their educational television needs and facilities.
- Co-ordinate programs to service the institutions named in subsection (1).
- Purchase, lease, rent and produce educational programs using national, regional, state and local materials as may be available in order to develop a comprehensive educational television curriculum.
- (4) Turn over all developed programs to the administrator of the division of communications for its technical transmission.

History: En. Sec. 1, Ch. 372, L. 1971.

75-5711. Educational television—advisory committee. The superintendent of public instruction shall appoint an advisory committee consisting of five (5) citizens of the state and the co-ordinator of educational television. Of the five (5) citizens appointed one (1) shall be a representative of the university system, one (1) a representative of the public schools, one (1) a representative of vocational-technical schools, one (1) from the television industry, and one (1) a representative from the general public. This advisory committee shall meet on the call of the superintendent of public instruction. It shall have the power to call to the attention of the state superintendent of public instruction any matter relating to educational television which in its judgment should be considered by the superintendent of public instruction.

History: En. Sec. 2, Ch. 372, L. 1971.

CHAPTER 58

COUNTY SUPERINTENDENT

Section 75-5801. Definition.
75-5802. Election and qualification.
75-5803. Term, oath and vacancy.
75-5804. Office costs and staff.

75-5805. Powers and duties.

75-5806. Additional positions.
75-5807. Other powers and duties.
75-5808. Assist trustees with school supervision.

Annual report and receipt. 75-5809.

75-5810. School census review, transmittal and receipt.

75-5811. Controversy appeals and hearings.

75-5801. Definition. As used in this Title, unless the context clearly indicates otherwise, "county superintendent" means the county government official designated as the school officer of the county by section 5 of article XVI of the constitution of Montana.

History: En. 75-5801 by Sec. 19, Ch. 5, L. 1971.

75-5802. Election and qualification. A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall

be elected at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of the county superintendent who:

- (1) possesses the qualifications required by the constitution of the state of Montana;
- (2) holds a valid teacher certificate issued by the superintendent of public instruction; and
- (3) has not less than three (3) years of successful teaching experience.

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971.

Cross-References

Bribery of school officers, sec. 94-810. Garnishment against superintendent, sec. 93-4341.

Mileage of officers, secs. 59-801, 59-802.

Municipal superintendent of schools, sec. 11-3525.

Collateral References

Schools and School Districts 48(1), (2).
78 C.J.S. Schools and School Districts \$\ 93, 94.
47 Am. Jur. 317, Schools, \ 30, 31.

75-5803. Term, oath and vacancy. The county superintendent shall hold office for a term of four (4) years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified.

Any person elected as the county superintendent shall take the oath or affirmation of office and shall give an official bond, as required by law.

If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. Such replacement shall serve until the next regular general election when a person shall be elected to serve the remainder of the initial term, if there be any remaining term.

History: En. 75-5803 by Sec. 21, Ch. 5, L. 1971.

Cross-References

Bonds of county officers and employees, sec. 6-203 et seq.
Constitutional oath, Const., Art. XIX,

constitutional oath, Const., Art. XIX sec. 1; sec. 59-413.

Manner of taking oath, sec. 75-8304.

Collateral References

Schools and School Districts 48(2), (3).
78 C.J.S. Schools and School Districts \$\ 96, 97.
47 Am. Jur. 318, 319, Schools, \\$\ 34, 35.

75-5804. Office costs and staff. The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent shall be paid from the county general fund all necessary traveling expenses that he actually incurs in discharging his duties after such expenses have been audited by the board of county commissioners.

Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint such candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at ninety per cent (90%) or less of the salary of the county superintendent.

75-5805 SCHOOLS

History: En. 75-5804 by Sec. 22, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 48(5), (6).
78 C.J.S. Schools and School Districts \$\$ 98, 99.

75-5805. Powers and duties. The county superintendent shall have general supervision of the schools of the county within the limitations prescribed by this Title and shall perform the following duties or acts:

- (1) determine, establish and re-establish trustee nominating districts, and fill additional trustee position vacancies in accordance with the provisions of sections 75-5903, 75-5904, and 75-5905;
- (2) administer and file the oaths of members of the trustees of the districts in his county in accordance with the provisions of section 75-5916;
- (3) fill by appointment any trustee position vacancies when required under the provisions of section 75-5918;
- (4) register the teacher certificate or emergency authorization of employment of any person employed in the county as a teacher, principal, or district superintendent in accordance with the provisions of section 75-6106;
- (5) act on each tuition application submitted to him in accordance with the provisions of sections 75-6313, 75-6314, 75-6315 and 75-6316, and transmit the tuition information required by section 75-6317;
- (6) file a copy of the audit report for a district or a school's extracurricular fund in accordance with the provisions of sections 75-6807 or 75-6323;
- (7) classify districts in accordance with the provisions of section 75-6503;
- (8) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of section 75-6504;
- (9) fulfill all responsibilities assigned to him under the provisions of this Title regulating the organization, alteration or abandonment of districts;
- (10) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with sections 75-6538 and 75-6539;
- (11) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of sections 75-6602, 75-6603, 75-6604, or 75-6606;
- (12) process and, when required, act on school isolation applications in accordance with the provisions of section 75-6608;
- (13) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets and fulfill such other responsibilities assigned to him under the provisions of this Title regulating school budgeting systems;
- (14) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of section 75-6804;
- (15) quarterly, unless otherwise provided by law, order the county treasurer to apportion state moneys, county school moneys and any other

school moneys subject to apportionment in accordance with the provisions of sections 75-6909, 75-6914, 75-6919, 75-6921, 75-7022, 75-7023, or 75-6805;

- (16) act on any request to transfer average number belonging (ANB) in accordance with the provisions of subsection (3) of section 75-6903;
- (17) calculate the estimated, budgeted general fund sources of revenue in accordance with the provisions of section 75-6911 and 75-6920, and the other general fund revenue provisions of the general fund chapter of this Title;
- (18) compute the revenues and the district and county levy requirements for each fund included on each district's final budget, and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds chapters of this Title;
- (19) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of sections 75-7003, 75-7020, or 75-7022;
- (20) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of sections 75-7519 or 75-7603;
- (21) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of section 75-7607, and otherwise comply with the textbook dealer provisions of this Title;
- (22) act on district requests to allocate federal moneys for indigent children for school food services in accordance with the provisions of section 75-8006; and
- (23) perform any other duty prescribed from time to time by this Title, any other act of the legislature, the policies of the board of education, or the rules and regulations of the superintendent of public instruction.

History: En. 75-5805 by Sec. 23, Ch. 5, L. 1971.

Description of Boundaries

There was no authority on the part of the county superintendent or board of county commissioners, under the guise of defining boundaries, to reach out and include in an existing district noncontiguous tracts of land not included therein; the county superintendent was authorized to make minor changes as necessary to make the boundaries definite and certain, but not to change the boundaries of the existing district by attaching lands wherever situated in the county not a part of any school district. State ex rel. Lantz v. Morris, 113 M 187, 191, 126 P 2d 1101.

Restraining or Enforcing Actions by School Boards

A county superintendent may restrain the improper exercise of ministerial powers by school boards by injunction (or enforce their proper exercise through mandamus) even though he is not a taxpayer within the particular district involved, and he need not, as a private citizen must, show a personal interest in the controversy. State ex rel. Hoagland v. School District No. 13, 116 M 294, 299, 151 P 2d 168.

Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

47 Am. Jur. 324, Schools, § 42.

75-5806. Additional positions. In his capacity as county superintendent, he also shall serve as:

(1) the county superintendent for a joint district under the conditions prescribed by sections 75-6720, 75-6803, and 75-6106;

- (2) the clerk of the board of school budget supervisors, as prescribed by section 75-6703;
- (3) the chairman of the county transportation committee, as prescribed by section 75-7014;
- (4) a member of the high school boundary commission of the county, as prescribed by section 75-6521;
- (5) an attendance officer for a district under the conditions prescribed by section 75-6305; and
- (6) the clerk of a joint board of trustees under the conditions prescribed by section 75-5928.

History: En. 75-5806 by Sec. 24, Ch. 5, L. 1971.

75-5807. Other powers and duties. The county superintendent shall have the power and it shall be his duty to:

- (1) administer the oath of office to trustees without the receipt of pay for administering the oath;
- (2) keep a record of his official acts, preserve all reports submitted to him under the provisions of this Title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies and equipment to his successor;
- (3) within ninety (90) days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:
- (a) the total of the cash balances of all funds maintained by the district at the beginning of the year,
- (b) the total receipts that were realized in each fund maintained by the district,
- (c) the total expenditures that were made from each fund maintained by the district, and
- (d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and
- (4) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed.

History: En. 75-5807 by Sec. 25, Ch. 5, L. 1971.

- 75-5808. Assist trustees with school supervision. The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:
- (1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;
 - (2) special visits to the schools on request of the trustees;

- (3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher:
- (4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

History: En. 75-5808 by Sec. 26, Ch. 5, L. 1971.

- 75-5809. Annual report and receipt. The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than the first day of September. Such report shall be completed on the forms supplied by the superintendent of public instruction which shall require the reporting of:
- (1) the final budget information for each district of the county, as prescribed by subsection (1) of section 75-6719;
- (2) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees annual report to the county superintendent under the provisions of subsection (5) of section 75-6806;
- (3) the pupil information for each district provided the county superintendent under the provisions of subsection (4) of section 75-6108 or subsection (7) of section 75-6113; and
- (4) any other information that may be requested by the superintendent of public instruction which is within his authority prescribed by this Title.

When the superintendent of public instruction receives a complete annual report from the county superintendent, he shall immediately issue a receipt for the annual report to such county superintendent. The county superintendent shall present the receipt to the board of county commissioners and, if the county commissioners do not receive the receipt, they shall not pay the county superintendent's salary for the last two (2) months of the calendar year until the receipt is presented to them.

History: En. 75-5809 by Sec. 27, Ch. 5, L. 1971.

Cross-Reference

County superintendent's annual financial report, sec. 75-6804.

75-5810. School census review, transmittal and receipt. When the county superintendent of any county receives the school census and the under-six-years-old census from a district as prescribed by section 75-5937, he shall examine both census reports to determine any errors or duplications with other districts of the county. In order to facilitate this examination the county superintendent shall maintain and update with each school census and under-six-years-old census an alphabetical card index of each family with each child of the family listed on the family card for all the families of the county.

The county superintendent shall examine the school census and undersix-years-old census reports of each district for:

(1) duplication of the same child's name on the reports of separate districts;

(2) fictitious names on the reports;

(3) the names of children who are too old or too young for inclusion on the report on which he is listed; or

(4) names of children who were not residents of the district on the first day of October in accordance with the terms of residence prescribed by section 75-5936.

Whenever the county superintendent's examination indicates a duplication or other error in completing the reports, he shall notify the reporting district or districts. Each district shall explain the inclusion of such children on its reports and the county superintendent shall include or delete the name of each such child on the basis of the explanation. If a district does not reply in less than fifteen (15) days, the county superintendent shall delete the names of the children that he has questioned.

After the county superintendent has completed his examination of each district's school census and under-six-years-old census reports and not later than the first day of December, he shall submit such reports to the superintendent of public instruction. The superintendent of public instruction shall immediately issue a receipt for the reports to the county superintendent when a complete report for each district of the county is received, and the county superintendent shall not be paid his salary after the first day of December until such receipt is presented to the board of county commissioners.

History: En. 75-5810 by Sec. 28, Ch. 5, L. 1971.

75-5811. Controversy appeals and hearings. The county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. Furthermore, he shall hear and decide all controversies arising under:

- (1) section 75-6315 or 75-6316 relating to the approval of tuition applications;
- (2) section 75-6104 relating to the termination of services of a tenure teacher; or
- (3) any other provision of this Title for which a procedure for resolving controversies is not expressly prescribed.

The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

The decision of the county superintendent may be appealed to the superintendent of public instruction and, if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

History: En. 75-5811 by Sec. 29, Ch. 5, Cross-Reference
Review by state superintendent, sec. 75-5709.

Elections

School elections and procedures therefor are not administrative matters and a school consolidation election contest is not a controversy subject to administrative determination, but must be settled under election laws governing election controversies. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

Estoppel of State Superintendent

An informal letter written by the superintendent of public instruction to a county superintendent based on correspondence between them relative to an order of the latter abolishing a school dis-trict and approving his action did not debar the state superintendent from thereafter passing upon the same question when presented upon a formal appeal from the county superintendent's decision. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

Exhaustion of Administrative Remedies Required

Court would not assume jurisdiction of controversy arising out of school board's determination of pupil's residence in particular district until administrative remedies had been exhausted, in absence of board's acting in excess of its jurisdiction. Peterson v. School Board of School District No. 1, 73 M 442, 447, 236 P 670. Ruling had no application to action commenced by school officer against a state appointee. State ex rel. Johnson v. Kassing, 74 M 25, 28, 238 P 582.

Where plaintiff teacher was dismissed by the board of school trustees and appealed the action of the board to the county superintendent, but failed to appeal the county superintendent's unfavorable decision to the superintendent of public instruction, plaintiff failed to exhaust remedies afforded by law and, since there was nothing in the record to show abuse of discretion on the part of school authorities, plaintiff was barred from court action against the school district for breach of contract. Kelsey v. School District No. 25, 84 M 453, 459, 276 P 26, distinguished in 88 M 110, 115, 290 P 252, explained in 114 M 488, 499, 138 P 2d

Where plaintiff seeking a writ of mandate to annul an order of a county school superintendent directing the abandonment of a school district had the right of appeal to the state superintendent, and, if unsuccessful there, could have had the matter passed upon by the district court on writ of review, but did not pursue such remedy, the writ of mandate was not available to him. State ex rel. McDonnell v. Mushurger. 111 M. 570, 584, 111 P. 24 v. Musburger, 111 M 579, 584, 111 P 2d

Injunction of Action Outside Jurisdiction

Section had no application to taxpayer's action to enjoin board of trustees from acting in excess of its jurisdiction in acquiring school site. Nichols v. School District No. 3, 87 M 181, 188, 287 P 624.

Interested Party

In absence of express provision as to who may appeal from decision of county superintendent, any person beneficially interested may appeal, and a taxpayer or a member of the board of trustees of the district respecting which the decision was made is such an interested party. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

Time for Appeal

No time has been fixed by statute within which an appeal may be taken from the decision of a county superintendent of schools, and in the absence of regulations by the state superintendent with relation thereto, the appeal may be taken within a reasonable time after the making of the decision, a limitation of six months being reasonable. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

Collateral References

Estoppel doctrine as applicable against government and its governmental agencies. 1 ALR 2d 338.

DECISIONS UNDER FORMER LAW

Dismissal of District Superintendent

Section providing specifically for appeal to county superintendent from an order dismissing a teacher had no application to an order of dismissal of a district school superintendent, the latter order being governed by section governing review by county superintendent generally. State ex rel. Howard v. Ireland, 114 M 488, 500, 138 P 2d 569.

CHAPTER 59

SCHOOL DISTRICT TRUSTEES AND OFFICERS

Section 75-5901. Definition. 75-5902. Number of trustee positions.

75-5903. Request and determination of number of high school district additional trustee positions. Establishment and purpose of trustee nominating districts. 75-5904. Redetermine additional trustee positions and subsequent adjustments. 75-5905. 75-5906. Election and term of office. 75-5907. Legislative intent to elect less than majority of trustees. 75-5908. Determination of terms after creation or consolidation of elementary districts. 75-5909. Determination of terms after establishment or re-establishment of additional trustee positions. Determination of terms after change of district classification. 75-5910. 75-5911. Term of vacated trustee position after election. 75-5912. Annual election. 75-5913. Candidate qualification and nomination. 75-5914. Nomination caucus in first class elementary district and election waiver. Conduct of election and ballot. 75-5915. 75-5916. Qualification and oath. 75-5917. Vacancy of trustee position. 75-5918. Filling vacated trustee position, appointee qualification and term of office. 75-5919. Trustee removal. Trustees membership of high school district operating county high 75-5920. school. 75-5921. Appointment of trustees for high school district operating county high school. Vacancy and filling of appointed trustee position. 75-5922. 75-5923. Election to approve the election of the trustees of high school district operating county high school. 75-5924. Membership of elected trustees of high school district operating county high school and nomination of candidates. 75-5925. Determination of terms of office and filling vacancy of trustee position. 75-5926. Delivering items to successor. 75-5927. Organization and officers. 75-5928. Joint board of trustees organization and voting membership. 75-5929. Powers of joint board of trustees. 75-5930. Meetings and quorum. 75-5931. Travel reimbursement and joint board of trustees secretary compensation. 75-5932. General powers and duties and record of acts. 75-5933. Powers and duties. 75-5934. Other powers and duties. 75-5935. Clerk of the district. 75-5936. School census and child eligibility. 75-5937. Report of school census, compensation and transmittal. 75-5938. Listing of handicapped children. 75-5939. Purchase of liability insurance. 75-5940. Liability of district. 75-5941. Personal liability of trustees.

75-5901. Definition. As used in this Title, unless the context clearly indicates otherwise, "trustees" means the governing board of a district. The trustees shall be composed of the number of trustee positions prescribed for a district by section 75-5902. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

History: En. 75-5901 Sec. 30, Ch. 5, Cross-Reference
L. 1971. Garnishment against board, sec. 93-4341.

75-5902. Number of trustee positions. The number of trustee positions in a district shall vary in the following manner according to the type of district:

- (1) The number of trustee positions in each elementary district shall vary according to the district's classification, as established by section 75-6503;
- (a) there shall be seven (7) trustee positions in a first class elementary district;
- (b) there shall be five (5) trustee positions in a second class elementary district; or
- (e) there shall be three (3) trustee positions in a third class elementary district.
- (2) The trustees of a high school district, except a high school district operating a county high school, shall be composed of:
- (a) the trustees of the elementary district where the high school building is located, or, if there is more than one (1) elementary district where high school buildings are located, the trustees of the elementary district designated by the high school boundary commission; and
- (b) the additional trustee positions determined in accordance with section 75-5903.
- (3) The trustees of a high school district operating a county high school shall be composed of seven (7) trustee positions.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971.

Cross-References

District classification, sec. 75-6503.

Trustees membership of high school district operating county high school, sec. 75-5920.

Constitutionality of Designation of Trustees

Section designating trustees of districts established under act relating to participation in public works programs by high school districts was not a denial of due process for failure to provide for election of trustees; unless the constitution provides otherwise, the legislature may provide for the choosing of the board of trustees of a school district as it sees fit. Lorang v. High School District "C" of Cascade County, 126 M 204, 247 P 2d 477, 478, 479.

Collateral References

Schools and School Districts \$\infty\$=52.
78 C.J.S. Schools and School Districts \$\{105\}.
47 Am. Jur. 316 et seq., Schools, \$\{29\} et seq.

75-5903. Request and determination of number of high school district additional trustee positions. As provided in subsection (2) (b) of section 75-5902, each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trustees under the provision of subsection (2) (a) of section 75-5902, request the establishment of such additional trustee positions.

A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(1) The taxable valuation of the elementary district which has its trustees placed on the high school trustees shall be divided by the number

of positions on the trustees of such elementary district to determine the taxable valuation per trustee position.

- (2) The taxable valuation used for the calculation in subsection (1) above shall be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.
- (3) The taxable valuation determined in subsection (2) above shall be divided by the taxable valuation per trustee position calculated in subsection (1) above. The resulting quotient shall be rounded off to the nearest whole number.

The number determined in subsection (3) above shall be the number of additional trustee positions except that the number of additional trustee positions shall not exceed four (4) in a first or second class high school district or two (2) in a third class high school district that is not eligible for an additional trustee position at large.

The county superintendent shall designate a third additional trustee position in a third class high school district when two-thirds (2/3) or more of the high school enrollment of the high school district and two-thirds (2/3) or more of the taxable valuation of the high school district is located outside of the elementary district which has its trustees placed on the high school district trustees. The person who fills such additional trustee position shall be elected at large from the entire high school district.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971.

75-5904. Establishment and purpose of trustee nominating districts. After the county superintendent has determined the number of additional trustee positions, he shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There shall be one (1) trustee nominating district for each additional trustee position, except the additional trustee at large. Unless it is impossible, the trustee nominating district boundaries shall be coterminous with elementary district boundaries.

The purpose of the trustee nominating district shall be to establish a representative district for the nomination and election of a resident of such district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of section 75-6410 and who reside in the trustee nominating district shall be the only electors who may vote for the additional trustee representing such district. They also shall be permitted to vote for a trustee position at large, if there is one, but for no other high school trustee position.

Any additional trustee position established under the provisions of this section shall be filled in a manner prescribed under the provisions of section 75-5918. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5904 by Sec. 33, Ch. 5, L. 1971.

75-5905. Redetermine additional trustee positions and subsequent adjustments. At any time there is a revision of the taxable valuation of the high school district or the elementary districts within it, or there is a reclassification of the elementary district which has its trustees placed on the high school district trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with section 75-6406. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with section 75-5904. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions shall terminate upon his order re-establishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, such additional trustee positions shall be filled in the manner prescribed under the provisions of section 75-5918. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5905 by Sec. 34, Ch. 5, L. 1971.

75-5906. Election and term of office. Every trustee position prescribed by this Title, except the trustee positions of a high school district operating a county high school, shall be subject to election and the term of office for each position shall be three (3) years unless it is otherwise specifically prescribed by this Title.

History: En. 75-5906 by Sec. 35, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts §§ 108, 114.
47 Am. Jur. 317, Schools, § 30.

Collateral References

Schools and School Districts 53.

75-5907. Legislative intent to elect less than majority of trustees. It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees shall not regularly expire and be subject to election on the same regular school election day. Therefore, in elementary districts, there shall not be more than three (3) trustee positions in first class districts, two (2) trustee positions in second class districts, or one (1) trustee position in third class districts regularly subject to election at the same time. In high school districts there shall not be more than two (2) additional trustee positions in first or second class districts, or more than one (1) in third class districts regularly subject to election at the same time.

While it is the intention of the legislature that the terms of a majority of trustees of any district shall not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time:

- (1) the creation of a new elementary district under the provisions of section 75-6518:
- (2) the consolidation of two (2) of more elementary districts to form an elementary district under the provisions of section 75-6506;
- (3) the establishment of additional trustee positions of a high school district under the provisions of section 75-5904 or 75-5905;
- (4) the change of a district's classification under the provisions of section 75-6503;
- (5) the filling of a trustee position which has become vacant under the provisions of section 75-5917 or any other provision of law; or
- (6) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election.

History: En. 75-5907 by Sec. 36, Ch. 5, L. 1971.

Ballot for Transitional Election

In a school district of the third class the members of the board of trustees had been holding over for many years for failure to hold elections to choose their successors. An election was called and the board instead of pursuing the method of procedure under such circumstances prescribed by this section, i.e., selecting by lot one of its members to hold over for one year and one for two years and providing for the election of the third for the term of three years, furnished ballots providing for the election of three trustees for terms of one, two and three

years respectively. Since there was only one trustee to be elected, the ballots furnished were so misleading as to render the election void. Jersey v. Peacock, 70 M 46, 48, 223 P 903, distinguished in 95 M 550, 553, 27 P 2d 1113.

Conflicting Provisions

Former section, apparently in conflict with another former section providing for appointment of trustee to fill vacancy, was intended to adjust the terms of school trustees so that the terms of a majority thereof should not expire at the same time, after which it had no further application to such district. State ex rel. Kuhl v. Kaiser, 95 M 550, 553, 27 P 2d 1113.

- 75-5908. Determination of terms after creation or consolidation of elementary districts. Whenever the trustees are elected at one (1) regular school election under the circumstances described in subsections (1) and (2) of section 75-5907, the members who are elected shall draw by lot to determine their terms of office. Such terms of office by trustee position shall be:
- (1) three (3) for three (3) years, two (2) for two (2) years, and two (2) for one (1) year in a first class elementary district;
- (2) two (2) for three (3) years, two (2) for two (2) years, and one (1) for one (1) year in a second class elementary district; or
- (3) one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year in a third class elementary district.

History: En. 75-5908 by Sec. 37, Ch. 5, L. 1971.

75-5909. Determination of terms after establishment or re-establishment of additional trustee positions. Whenever all of the additional trustee positions are subject to election at one (1) regular school election under the circumstance described in subsection (3) of section 75-5907, the members who are elected shall draw by lot to determine their terms of office. Such terms of office by number of members elected shall be:

- (1) two (2) for three (3) years, if four (4) are elected;
- (2) one (1) for three (3) years, if one (1), two (2) or three (3) are elected;
- (3) one (1) for two (2) years, if two (2), three (3) or four (4) are elected; and
 - (4) one (1) for one (1) year, if three (3) or four (4) are elected.

Whenever the re-establishment of the additional trustee positions for a high school district under the provisions of section 75-5905 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to determine their terms of office and such terms shall be determined in accordance with the additional trustee terms prescribed in this section.

History: En. 75-5909 by Sec. 38, Ch. 5, L. 1971.

75-5910. Determination of terms after change of district classification. Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of such district under the circumstance described in subsection (4) of section 75-5907, the members who are elected shall draw by lot to determine their terms of office which shall be one (1) for three (3) years and one (1) for two (2) years.

History: En. 75-5910 by Sec. 39, Ch. 5, L. 1971.

75-5911. Term of vacated trustee position after election. Whenever a trustee position is subject to election because a vacancy of such position has occurred since the last regular school election day, the term of the trustee position shall not change and the member elected to fill such position shall serve the remainder of the unexpired term.

History: En. 75-5911 by Sec. 40, Ch. 5, Li. 1971.

Term of Appointees

Under this section, a school trustee appointed to fill a vacancy shall hold office only until the next annual school election at which a trustee shall be elected for the unexpired term. Two of three trustees of a district for the third class elected for three-year terms expiring in 1934 and 1935, resigned. The board of trustees declined to call an election in the spring of 1933 to choose successors to the appointees, on the theory that they held

over for the respective terms; however, by the use of stickers, successors were elected at such election. The district court properly granted a writ of mandate compelling the board of trustees to issue certificates of election to the persons elected to succeed the appointees. State ex rel. Kuhl v. Kaiser, 95 M 550, 553, 555, 27 P 2d 1113.

Collateral References

Schools and School Districts 53(4).
78 C.J.S. Schools and School Districts \$117.
47 Am. Jur. 319, Schools, § 35.

75-5912. Annual election. In each district an election of trustees shall be conducted annually on the regular school election day, the first Saturday of April, unless an election of trustees is excused under the provisions of section 75-5914. Election of trustees shall comply with the election provisions of this Title.

History: En. 75-5912 by Sec. 41, Ch. 5, L. 1971.

Collateral References

Elections@=38. 29 C.J.S. Elections § 77. 47 Am. Jur. 317, Schools, § 30. 75-5913 SCHOOLS

75-5913. Candidate qualification and nomination. Any person who is qualified to vote in a district under the provisions of section 75-6410 shall be eligible for the office of trustee.

Any five electors qualified under the provisions of section 75-6410 of any district, except a first class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than twenty (20) days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated.

History: En. 75-5913 by Sec. 42, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts § 106.
47 Am. Jur. 317, Schools, § 31.

Collateral References

Schools and School Districts 53(2).

75-5914. Nomination caucus in first class elementary district and election waiver. In first class elementary districts, trustee candidates shall be nominated at a caucus attended by not less than twenty (20) electors of the district who are qualified under the provisions of section 75-6410. The caucus shall be conducted not less than forty (40) days nor more than sixty (60) days before the regular school election day.

When a candidate nominating caucus is conducted, it shall be a public meeting and a caucus chairman and secretary shall be elected by the caucus participants. The caucus may nominate any number of candidates.

Within ten (10) days after the date of the caucus meeting, the chairman and secretary of the caucus shall certify and file the nominations of the candidates with the clerk of the district by stating the date and place of the caucus, and the name of each candidate nominated. If there are different terms to be filled, the term for which each candidate is nominated also shall be stated.

Any votes for a person who has not been nominated in the manner provided by this section shall not be considered by the trustees of a first class elementary district when canvassing and certifying the election results. Whenever not more than one candidate per trustee position subject to election has been nominated, the clerk of the district shall report such fact to the trustees. The trustees shall certify the election of the nominated candidates and no trustee election shall be conducted on the regular school election day.

History: En. 75-5914 by Sec. 43, Ch. 5, L. 1971.

Time for Nomination

In computing whether a nomination was made at least forty days before the day of election, resort must be had to section 90-407, which requires that in computing time the first day be excluded and the last day included; thus where date of election was April 3, 1954 the last day for nominating meetings was February 22. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d

998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Pericich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

Collateral References

Elections 225.
29 C.J.S. Elections §§ 91, 104.
25 Am. Jur. 2d 837, Elections, § 145.

75-5915. Conduct of election and ballot. The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of section 75-6406, except as provided in section 75-5914. The trustees shall call and conduct the trustee election in the manner prescribed in this Title for school elections. Any elector qualified to vote under the provisions of section 75-6410 may vote at a trustee election. The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT

SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a three (3) year term:

(List the names of the candidates for a three (3) year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a two (2) year term:

(List the names of the candidates for a two (2) year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a one (1) year term:

(List the names of the candidates for a one (1) year term with a vacant square in front of each name.)

In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need to be used. The ballot also shall be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election, except that write-in voting shall not be available in a first class elementary district.

When additional trustees in a high school district are to be elected, a separate ballot shall be used in each nominating district showing only the names of those candidates for which the electors of such district are entitled to vote.

History: En. 75-5915 by Sec. 44, Ch. 5, L. 1971.

Collateral References Elections 34, 60, 172. 29 C.J.S. Elections §§ 15, 70, 161. 25 Am. Jur. 2d 751 et seq., Elections, § 58 et seq.; 26 Am. Jur. 2d 15, 45, Elections, § 185, 215.

75-5916. Qualification and oath. Any person who receives a certificate of election as a trustee under the provisions of section 75-6423 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not less than fifteen (15) days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

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If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by section 75-5918 and shall serve until the next regular election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 53(2), 78 C.J.S. Schools and School Districts 111.

Cross-References

Constitutional oath of office, Const., Art. XIX, sec. 1.

Manner of taking oath, sec. 75-8304.

75-5917. Vacancy of trustee position. Any elected trustee position shall be vacant whenever the incumbent:

- (1) dies;
- (2) resigns;
- (3) moves his residence from the applicable district, or from the nominating district in the case of an additional trustee in a high school district;
- (4) is no longer a registered elector of the district under the provisions of section 75-6410;
 - (5) is absent from the district for sixty (60) consecutive days;
- (6) fails to attend three consecutive meetings of the trustees without a good excuse;
 - (7) has been removed under the provisions of section 75-5919; or
- (8) ceases to have the capacity to hold office under any other provision of law.

A trustee position also shall be vacant when an elected candidate fails to qualify under the provisions of section 75-5916.

History: En. 75-5917 by Sec. 46, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts § 117. 47 Am. Jur. 319, Schools, § 35.

Collateral References

Schools and School Districts 53(4).

75-5918. Filling vacated trustee position, appointee qualification and term of office. Whenever a trustee position becomes vacant in a first or second class district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment.

Whenever a trustee position becomes vacant in a third class district, the remaining members of the trustees shall declare such position vacant and notify the county superintendent of the vacancy. The county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent in not less than fifteen (15) days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section. Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified.

History: En. 75-5918 by Sec. 47, Ch. 5, L. 1971.

75-5919. Trustee removal. Any trustee may be removed from his trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are preferred against a trustee and good cause is shown, the board of county commissioners may suspend such trustee from his trustee position until the charges can be heard in the court of competent jurisdiction.

Collateral References

Schools and School Districts 53(5).

75-5920. Trustees membership of high school district operating county high school. There shall be seven (7) trustee positions for the trustees of a high school district operating a county high school. Unless it has been otherwise established under law, the trustees of such a high school district shall be composed of the following:

- (1) the county superintendent; and
- (2) six (6) members appointed by the board of county commissioners, no more than three (3) of whom shall reside outside of the elementary district where the county high school building is located.

History: En. 75-5920 by Sec. 49, Ch. 5,
L. 1971.

Collateral References

78 C.J.S. Schools and School Districts § 92.
47 Am. Jur. 316 et seq., Schools, § 29 et seq.

Schools and School Districts 48(1).

- 75-5921. Appointment of trustees for high school district operating county high school. When trustees of a high school district operating a county high school are appointed by the board of county commissioners, the commissioners, at their December meeting, shall appoint members of the trustees for those terms which are expiring. Each member shall be appointed for a term of two (2) years beginning on the first Monday of January except that a one (1) year appointment shall be made whenever it is required to maintain the following balance of membership:
- (1) The terms of not more than three (3) appointed members shall expire at the same time; and
- (2) The terms of not more than two (2) appointed members who reside outside of the elementary district where the county high school building is located shall expire at the same time.

Any member appointed under this section shall serve until his successor has been appointed and qualifies by filing an oath of office with the county superintendent.

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75-5922. Vacancy and filling of appointed trustee position. In those instances where the board of county commissioners appoint the trustees of a high school district operating a county high school, a trustee position shall become vacant whenever the incumbent:

- (1) fails to be qualified or have the capacity to hold the trustee position under any of the applicable conditions prescribed under section 75-5917;
- (2) moves his residence from the elementary district where the county high school building is located but within the high school district, and such change of residence will cause a majority of the appointed members to reside outside of such elementary district.

Whenever a trustee position is vacated, the remaining members of the trustees shall declare such position vacant and notify the board of county commissioners. The board of county commissioners shall immediately appoint a person to serve the remainder of the term for such vacated trustee position. Their appointment shall comply with the requirements of section 75-5921.

History: En. 75-5922 by Sec. 51, Ch. 5, 78 C.J.S. Schools and School Districts § 96. 47 Am. Jur. 319, Schools, § 35.

Collateral References

Schools and School Districts 48(3).

75-5923. Election to approve the election of the trustees of high school district operating county high school. The trustees of a high school district operating a county high school may be elected when the conditions of this section are satisfied.

Twenty per cent (20%) or more of the electors who are qualified to vote in the high school district under the provisions of section 75-6410 may petition the board of county commissioners to call an election to consider the proposition of electing the trustees of the high school district. Whenever the board of county commissioners receives a valid petition requesting such an election, they shall, within ten (10) days after the receipt of the petition and as provided by section 75-6406, order the trustees of the high school district to call an election on the proposition to elect the trustees.

The high school district trustees shall call and conduct an election in the manner prescribed in this Title for school elections. Any elector qualified to vote under the provisions of section 75-6410 may vote on the proposition. The ballot for the election shall utilize the following proposition:

Shall the trustees of the high school district for the county high school be elected?

FOR the election of trustees.
AGAINST the election of trustees

If a majority of the electors voting at the election approve the proposition, the trustees shall thereafter be elected beginning on the first regular school election day after such approval. If a majority of the electors disapprove, the trustees shall continue to be appointed under the provisions of section 75-5921.

History: En. 75-5923 by Sec. 52, Ch. 5, L. 1971.

29 C.J.S. Elections §§ 15, 67, 69, 79, 170. 25 Am. Jur. 2d 751 et seq., Elections, § 58 et seq.; 26 Am. Jur. 2d 15, 17, 51, Elections, §§ 185, 188, 221.

Collateral References

Elections 30, 33, 331/2, 59, 175.

- 75-5924. Membership of elected trustees of high school district operating county high school and nomination of candidates. Whenever the election of the trustees of a high school district operating a county high school has been approved by the electorate, the trustees shall be composed of the following:
- (1) four (4) trustee positions filled by members residing in the elementary district where the county high school building is located; and
- (2) three (3) trustee positions filled by members one of whom resides in each of the three (3) trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent and board of county commissioners shall establish the nominating districts and, unless it is impossible, such districts shall have coterminous boundaries with elementary district boundaries.

The provisions of section 75-5913 shall govern the nomination of candidates for the trustee election prescribed in this section.

History: En. 75-5924 by Sec. 53, Ch. 5, L. 1971.

- 75-5925. Determination of terms of office and filling vacancy of trustee position. The members of the trustees of a high school district operating a county high school who are elected at the first election after the voters approve the election of trustees, shall draw by lot to determine their terms. Such terms of office shall be:
- (1) two (2) for three (3) years, one (1) for two (2) years and one (1) for one (1) year for the trustee positions filled by members of the trustees from the elementary district where the county high school building is located; and
- (2) one (1) for three (3) years, one (1) for two (2) years and one (1) for one (1) year for the trustee positions filled by members of the trustees from the trustee nominating districts.

Thereafter, all terms of office shall be for three (3) years and until the successor has qualified, except in the case of electing a member to serve the remainder of an unexpired term for a vacated elected trustee position.

Whenever an elected trustee position vacancy occurs under any of the circumstances prescribed by section 75-5917, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing, a competent person as a successor. The trustees shall notify the

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appointee and the county superintendent of the appointment. The appointee shall qualify by completing and filing an oath of office with the county superintendent, and shall serve until the next regular school election and his successor has qualified for the remainder of the unexpired term of the trustee position.

History: En. 75-5925 by Sec. 54, Ch. 5, 78 C.J.S. Schools and School Districts § 96. 47 Am. Jur. 318, 319, Schools, §§ 34, 35.

Collateral References

Schools and School Districts 58(3).

75-5926. Delivering items to successor. Whenever any member of the trustees, superintendent, principal or clerk of the district is replaced by election or otherwise, he shall immediately deliver all books, papers and moneys pertaining to the position to his successor. Any such person who shall refuse to do so, or who shall willfully destroy any such material or misappropriate any moneys entrusted to him, shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than one hundred dollars (\$100).

History: En. 75-5926 by Sec. 55, Ch. 5, L. 1971.

75-5927. Organization and officers. The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees but not later than the third Saturday of April, except that if the trustees of a high school district operating a county high school are not elected they shall annually organize as the governing board at the first regular meeting of January. In order to organize, the trustees of the district shall be given notice of the time and place where the organization meeting will be held and, at such meeting, they shall choose one of their number as the chairman. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who shall be a member of the board.

The chairman of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this Title and any other duties that normally pertain to such officer.

History: En. 75-5927 by Sec. 56, Ch. 5, Cross-Reference
L. 1971. Cross-Reference
Duties of clerk of district, sec. 75-5935.

75-5928. Joint board of trustees organization and voting membership. Whenever the trustees of a high school district operating a county high school and the trustees of the elementary district where the county high school building is located deem it to be within the best interests of the two districts, they may form a joint board of trustees for the purpose

of co-ordinating the educational program of both districts. When a joint board of trustees is formed, all of the members of both districts' trustees shall be members of the joint board of trustees, and each member shall have the right to participate in the meetings but voting on matters considered by the joint board shall be limited by the provisions of this section.

At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. If the county superintendent is a member of the high school trustees, he shall be the secretary; otherwise, a secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three (3) successive ballots have resulted in a tie vote of the joint board of trustees.

The voting membership of the joint board of trustees shall be equalized between the trustee membership of the two participating districts. After the selection of the chairman and the secretary, if necessary, the voting membership shall be:

- (1) all of the membership of the elementary district trustees unless one of its members is selected as secretary, in which case such member shall not be a voting member; and
- (2) the members of the high school district trustees who are selected by such trustees as voting members of the joint board in a number equal to the number of voting members of the elementary district trustees as established under subsection (1) above. The names of the voting membership selected by the high school trustees shall be submitted in writing to the secretary of the board and shall be the only members of such district's trustees eligible to vote on joint board matters unless such list is revised in writing by the high school trustees.

Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

History: En. 75-5928 by Sec. 57, Ch. 5, L. 1971.

75-5929. Powers of joint board of trustees. When a joint board of trustees is formed as provided by section 75-5928, it shall have the power to:

- (1) jointly employ a district superintendent under the provisions of section 75-6112;
 - (2) jointly employ teachers under the provisions of section 75-6102;
 - 3) open a junior high school under the provisions of section 75-6605;
 - (4) prescribe and administer joint administrative policy; and
- (5) prorate all items of joint expense between the elementary and high school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within thirty days, be appealed by the trustees of either district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the two districts.

History: En. 75-5929 by Sec. 58, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts §§ 99, 119.
47 Am. Jur. 324, Schools, § 42.

Collateral References

Schools and School Districts 248(6), 55.

75-5930. Meetings and quorum. The trustees of a district shall hold at least the following number of regular meetings:

- (1) an organization meeting, as prescribed by section 75-5927;
- (2) a preliminary budget meeting, as prescribed by section 75-6707; and,
- (3) in first-class elementary districts, not less than one (1) regular meeting per month; or
- (4) in any other district, regular meetings during the months of April, July, October and January.

The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (3) or (4) and, in addition, any other regular meeting days the trustees wish to establish; such meetings shall be conducted in school buildings or on other property belonging to the district.

Special meetings of the trustees may be called by the chairman or any two (2) members of the trustees by giving each member a forty-eight (48) hour written notice of the meeting.

No business shall be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting shall be a majority of the trustees' membership. All trustee meetings shall be public meetings, as prescribed by section 82-3401, R. C. M., 1947, except that the trustees may recess to an executive session under the provisions of section 82-3402, R. C. M., 1947.

History: En. 75-5930 by Sec. 59, Ch. 5, L. 1971.

Dismissal of Teacher

The notice of dismissal which must be given a tenured teacher is one based upon action by a majority of the board of trustees taken at a meeting thereof; hence, where two of the three members of the board decided in casual conversations at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismisal. To give validity to the business of the board it must be transacted at a regular or special meeting, and the trustees must then act as a board. Day v. School District No. 21, 98 M 207, 214, 215, 38 P 2d 595.

Where no meeting of the school board, either special or regular, was held prior to summary discharge of schoolteacher on ground of incompetency, board's dismissal was void for want of jurisdiction. Wyatt v. School District No. 104, 148 M 83, 417 P 2d 221, 223, 225, 22 ALR 3d 1039.

Collateral References

Schools and School Districts. 57. 78 C.J.S. Schools and School Districts § 123.

47 Am. Jur. 321, Schools, § 38.

Necessity, sufficiency, and effect of minutes or record of meeting of school board. 12 ALR 235.

75-5931. Travel reimbursement and joint board of trustees secretary compensation. The members of the trustees of any district shall not

receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over three (3) miles from the trustees' meeting place shall be reimbursed eight cents (\$.08) for every mile necessarily traveled between their residence and the meeting place, and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, L. 1971.

Cross-Reference Mileage, secs. 59-801, 59-802.

- 75-5932. General powers and duties and record of acts. The trustees of each district shall have the power and it shall be its duty to prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:
 - (1) adopt the policies required by this title; and
- (2) adopt policies to implement or administer the requirements of the general law, this Title, the policies of the board of education or the rules and regulations of the superintendent of public instruction.

The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees.

History: En. 75-5932 by Sec. 61, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts § 119 et seq.
47 Am. Jur. 324, Schools, § 42.

Collateral References

Schools and School Districts 55,58.

DECISION UNDER FORMER LAW

General Powers

Where the legislature failed to make provision for a uniform series of text-books throughout the state, or to devolve the duty of doing so upon some officer or board, the trustees of a school district, under the general powers vested in them, and particularly the statutory power of

the board "to prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction, for their own government of schools under their supervision," could prescribe books for the schools of the district. Campana v. Calderhead, 17 M 548, 552, 44 P 83, 36 LRA 277.

- 75-5933. Powers and duties. As prescribed elsewhere in this Title, the trustees of each district shall have the power and it shall be its duty to perform the following duties or acts:
- (1) employ or dismiss a teacher, principal or district superintendent in accordance with the provisions of the school personnel chapter of this Title;
- (2) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this Title;
- (3) call, conduct and certify the elections of the district in accordance with the provisions of the school election chapter of this Title;

- (4) participate in the teachers retirement system of the state of Montana in accordance with the provisions of the teachers retirement system chapter of this Title;
- (5) participate in district boundary change actions in accordance with the provisions of the districts chapter of this Title;
- (6) organize, open, close or acquire isolation status for the schools of the district in accordance with the provisions of the school organization chapter of this Title;
- (7) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system chapter of this Title;
- (8) conduct the fiscal businss of the district in accordance with the provisions of the school financial administration chapter of this Title;
- (9) establish the ANB, foundation program, permissive levy, additional levy, cash reserve and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund chapter of this Title;
- (10) establish, maintain, budget and finance the transportation program of the district in accordance with the provisions of the transportation chapter of this Title;
- (11) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this Title;
- (12) when applicable, establish, financially administer and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, post-secondary vocational-technical center fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund and interlocal co-operative agreement fund in accordance with the provisions of the other school funds chapter of this Title;
- (13) when applicable, administer any interlocal co-operative agreement, gifts, legacies or devises in accordance with the provisions of the miscellaneous financial chapter of this Title;
- (14) hold in trust, acquire and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities chapter of this Title;
- (15) operate the schools of the district in accordance with the provisions of the school calendar chapter of this Title;
- (16) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education and special education chapters of this Title;
- (17) establish and maintain the school food services of the district in accordance with the provisions of the school food services chapter of this Title; and
- (18) perform any other duty and enforce any other requirements for the government of the schools prescribed by this Title, the policies of

the board of education or the rules and regulations of the superintendent of public instruction.

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971.

Cross-References

Federal economic opportunity and poverty relief, districts authorized to receive, sec. 71-1601.

Gifts, legacies and devises, power to accept, sec. 75-7309.

Joint interestate school agreements, sec.

75-7308.

Subd. 14, School Property

The term "schoolhouse" as used in somewhat similar provision in the Compiled Statutes of 1887 (Comp. Stat. 1887, div. 5, sec. 1885) did not mean simply the house, but referred to the school plant, including the general equipment, pupils and teachers, so that the board had no authority to remove the school properties and equipment to another district without being directed to do so by a vote of the people. State ex rel. Jay v. Marshall, 13 M 136, 139, 32 P 648.

Mandamus is the proper remedy to require the trustees of a school district to determine the location of a site for a schoolhouse, where they arbitrarily remove a school to a site selected by themselves, without consulting the electors; a resident and taxpayer of the school district is a party beneficially interested, and entitled in such case to make the application. State ex rel. Bean v. Lyons, 37 M 354, 365, 96 P 922.

The provision of section 1719 of the Political Code of 1895, in regard to the removal of schoolhouse and the purchase or sale of school lots when directed by vote of the district, was not only a grant of power to school boards, but also a limitation upon their power, both as to its extent and as to the mode of its exercise, so that they could not do any of the acts referred to without first obtaining the consent of the electors. State ex rel. Bean v. Lyons, 37 M 354, 365, 96 P 922.

Under predecessor to subdivision 14 of this section, the selection and purchase of a site for a school building in districts of the first and second classes was not entrusted to the electors of the districts but lodged in the trustees under directions of the electors. Nichols v. School District No. 3, 87 M 181, 184, 287 P 624.

Subd. 16, Athletic Training

Since board had provided for athletic training under provision authorizing additions to prescribed courses of study, outdoor gymnasium and athletic field was a necessary part of school plant, and bond issue therefor would not be enjoined. McNair v. School District No. 1, 87 M 423, 432, 288 P 188, 69 ALR 866.

Collateral References

Schools and School Districts@55.
78 C.J.S. Schools and School Districts
§ 119 et seq.
47 Am, Jur. 324, Schools, § 42.

75-5934. Other powers and duties. The trustees of any district shall have the power and it shall be its duty:

- (1) to employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;
- (2) to make such reports from time to time as the county superintendent, superintendent of public instruction and board of education may require;
- (3) to retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil, and upon request make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;
- (4) for each member of the trustees, to visit each school of the district not less than once each school fiscal year to examine its management, conditions and needs; and

(5) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than four (4) feet by six (6) feet.

History: En. 75-5934 by Sec. 63, Ch. 5, L. 1971.

75-5935. Clerk of the district. As provided in section 75-5927, the trustees shall employ and appoint a clerk of the district. It shall be the duty of the clerk of the district to attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees shall have one of its members or a district employee act as clerk for such meeting, and such person shall supply the clerk with a certified copy of the proceedings. The clerk of the district also shall be the custodian of all documents, records and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

- (1) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this Title;
- (2) prepare the annual trustees' report required under the provisions of subsection (5) of section 75-6806; and
- (3) make an annual census of all the children of the district in accordance with sections 75-5936 and 75-5937.

History: En. 75-5935 by Sec. 64, Ch. 5, L. 1971.

Acting Clerk of Board of Trustees

Title of acting clerk to office could not be tried in collateral suit on contract with school district. Mintener Lumber Co. v. School District No. 56, 84 M 461, 469, 277 P 9.

Bond Sale Resolution

School bond election was not invalid for failure of clerk to set out resolution in full in minute books, in absence of showing that resolution itself was defective since minute books need not reflect exact contents of resolution. Elliot v. School District No. 64-JT, 149 M 299, 425 P 2d 826.

Nature of Position

The clerk of a school district board of trustees does not perform any of the sovereign functions of government; consequently, he is an employee rather than a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 486.

Presentation of Claims

The presentation of a claim to a clerk of a district is nugatory, and his assurance that the same would be paid does not bind the board. Kenyon-Noble Lumber Co. v. School District No. 4, 40 M 123, 129, 105 P 551.

Collateral References

Schools and School Districts \$63(3).
78 C.J.S. Schools and School Districts \$127.

75-5936. School census and child eligibility. The trustees of each elementary district shall annually take a school census of all children residing in the district who are six (6) years of age or older but who have not yet reached their twenty-first birthday. At the time the school census is taken, the trustees also shall take a census of all the children residing in the district who are less than six years old. The school census shall be taken between the fifteenth day of September and the fifteenth day of October but the age of the child or the residence of the child or parents

shall be determined on the basis of his age or the residence on the first day of October.

For the purpose of the school census and under-six-years-old census:

- (1) a child shall be a resident of a district when:
- (a) he resides with his parent or guardian in the district;
- (b) he has resided in the district but is temporarily living outside of the district to attend a public or private school, an institution of higher education or a Montana public institution and his parent or guardian reside in the district;
- (c) he is married or has been married and resides in the district, regardless of the residence of his parents or guardian;
- (d) he is living at a private institution located in the district that exists primarily for the rehabilitation, psychiatric or general medical care, or general welfare of the child, and such private institution may or may not also provide education for the child; or
- (e) any other child who resides in the district and who is not specifically excluded under subsection (2), below.
 - (2) a child shall not be a resident of a district when:
 - (a) he is visiting in or passing through the district;
- (b) he is living in the district for the purpose of attending a public or private school or institution which exists primarily for the purpose of providing elementary, secondary or higher education, and his parent or guardian does not live in the district:
- (c) he is an unmarried child who is living in the district but his parents do not reside in the district and he is not living in a private institution, as defined in subsection (1) (c) above; or
- (d) he may be properly included on the school census of some other district.

History: En. 75-5936 by Sec. 65, Ch. 5, L. 1971.

Census as Evidence

A school census kept as required by law is a public record, and admissible in evidence as prima facie evidence of the facts therein stated. State v. Vinn, 50 M 27, 39, 144 P 773.

Residence of Children

The exact census which the clerk is required to take must be accurate precisely, and cannot include any person whose legal residence is elsewhere. School District No. 7 v. Patterson, 10 M 17, 24 P 698. See also State ex rel. Johnson v. Kassing, 74 M 25, 28, 238 P 582.

- 75-5937. Report of school census, compensation and transmittal. The school census and the under-six-years-old census for a district shall be reported in alphabetical order by the child's last name on the blanks supplied by the county superintendent and prescribed by the superintendent of public instruction, unless the superintendent of public instruction has authorized a district to submit its census by a data processing tabulation. The school census and the under-six-years-old census shall report the following facts:
- (1) The full name, age, birth date and sex of each child grouped under the family information required under subsection (2);
- (2) The full names of both parents or guardian and the address of the parents or the guardian; and

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(3) Any other information required by the superintendent of public instruction.

The trustees shall pay the clerk of the district or any other person who enumerates the children of the district for the school census or under-six-years-old census at a rate not exceeding ten cents (\$.10) per name properly reported. The clerk or such other person shall not be paid until the report is complete and submitted to the county superintendent. The clerk or such other person shall receive the enumeration compensation in addition to any other regular compensation the district may pay for his services.

The clerk or such other person conducting the census shall submit two copies of the reports, under oath, to the trustees who in turn shall submit them to the county superintendent by the first day of November. Failure to submit the report in accordance with the requirements of this section, or the inclusion of fictitious names or nonresident children on the census report shall be a misdemeanor which shall be punishable by a fine of not less than ten dollars (\$10) or more than fifty dollars (\$50).

If the trustees fail to submit the school census report, the members of the trustees shall jointly be liable for the full amount of interest and income moneys lost to the district. Any taxpayer of the district may bring action in the name of the district to recover the money for the district.

History: En. 75-5937 by Sec. 66, Ch. 5, L. 1971.

75-5938. Listing of handicapped children. At the time the school census is taken and if the superintendent of public instruction requests such a listing, the trustees shall include a listing of handicapped children of the district as a part of their school census report on forms provided by the superintendent of public instruction. In co-operation with a public health nurse, school nurse or public health medical officer, the listing of the handicapped children shall be completed by using reasonable diligence to ascertain the names and such information for each child as may be requested by the superintendent of public instruction.

The superintendent of public instruction may request a survey and the listing of handicapped children prescribed by this section at his discretion but in co-operation with the state department of health.

History: En. 75-5938 by Sec. 67, Ch. 5, L. 1971.

75-5939. Purchase of liability insurance. The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property. If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund. The provisions of section 40-4402, R. C. M., 1947, shall apply to the provisions of this section.

History: En. 75-5939 by Sec. 68, Ch. 5, L. 1971.

75-5940. Liability of district. The trustees of any district shall be liable in the name of the district for any judgment against the district.

and they shall pay such judgments in the same manner as any other obligation of the district.

History: En. 75-5940 by Sec. 69, Ch. 5, L. 1971.

Cross-References

Definition of emergency for budgeting purposes, sec. 75-6723.

Sovereign immunity defense prohibited when liability insured, sec. 40-4402.

Collateral References

Schools and School Districts 88, 89. 78 C.J.S. Schools and School Districts §§ 319, 320.

47 Am. Jur. 332, 335, Schools, §§ 52,57.

Tort liability of public schools and institutions of higher learning. 160 ALR 7 and 84 ALR 2d 489.

accidents associated with chemistry experiments, shopwork and manual or vocational training. 35 ALR 3d 758.

accidents associated with transportation

of students. 34 ALR 3d 1210. accidents occurring during school athletic events. 35 ALR 3d 725.

accidents occurring in physical education

classes. 36 ALR 3d 361. condition of buildings or equipment, 34 ALR 3d 1166.

injuries caused by acts of fellow students. 36 ALR 3d 330.

Immunity: comment vote on rule of governmental tort nonliability as applied to public schools and institutions of higher learning. 33 ALR 3d 703.

DECISIONS UNDER FORMER LAW

Teacher's Salary

Section 1803 of the Political Code of 1895 did not authorize entry of judgment against school district for the unpaid salary of a schoolteacher, where the district admitted the claim but did not have sufficient funds to pay the salary. Jay v. School District No. 1, 24 M 219, 229, 61 P 250.

Former section was repealed by implication, in so far as it provided that judgments against a school district for salary due a teacher on a contract should be paid by the board of trustees out of moneys to the credit of the district, by the School District Budget Act, Ch. 146, Laws 1931. State ex rel. McHose v. District Court, 95 M 230, 233, 26 P 2d 345.

75-5941. Personal liability of trustees. The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this Title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to improper use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts § 129. 47 Am. Jur. 333, 339, Schools, §§ 54, 60.

Collateral References

Schools and School Districts 62.

CHAPTER 60

TEACHER CERTIFICATION

75-6001. System of teacher certification. 75-6002. Board of education policies. Issuance of teacher certificates. 75-6003.

Qualifications. 75-6004.

Noncitizen teacher certification. 75-6005. 75-6006. Classifications of teacher certificates. 75-6007. Outstanding teacher certificates.

75-6008. Term of teacher certificates.

75-6009. Fees for teacher certificates.
75-6010. Suspension, revocation and denial—appeals.
75-6011. Emergency authorization of employment.

75-6001. System of teacher certification. In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher certification shall be established and maintained under the provisions of this Title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or the district has obtained an emergency authorization of employment from the state.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971.

Cross-Reference

Health education course including drug and alcohol abuse instruction, sec. 75-8902.

Collateral References

Schools and School Districts 129-131. 78 C.J.S. Schools and School Districts § 159 et seq.

47 Am. Jur. 373, Schools, 8 110.

75-6002. Board of education policies. To effect an orderly and uniform system of teacher certification, the board of education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this Title, prescribe and adopt policies for the issuance of teacher certificates. Such policies shall provide for:

- (1) reasonable training and experience requirements for teacher, supervisor and administrative certificates and endorsements thereon as provided by the certification classification in section 75-6006;
- (2) the renewal of teacher certificates based on the same conditions prescribed for the initial issuance of certificates;
- (3) the conduct of hearings on teacher certification revocation, suspension or denial;
- (4) the issuance of emergency authorization to a district to employ a person, who is not the holder of a valid teacher certificate, as an instructor of pupils; and
- (5) any other policy not inconsistent with the law, which is necessary for the proper operation of a system of teacher certification.

History: En. 75-6002 by Sec. 72, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 130, 132. 78 C.J.S. Schools and School Districts §§ 163, 165.

75-6003. Issuance of teacher certificates. The superintendent of public instruction shall issue all teacher certificates in the state of Montana. In issuing teacher certificates, the superintendent of public instruction shall comply with the provisions of this Title and the teacher certification policies adopted by the board of education. The superintendent of public instruction shall not issue a teacher certificate to any person who does not satisfy the qualifications or other requirements of this Title and of the board of education policies for teacher certification.

History: En. 75-6003 by Sec. 73, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 230. 78 C.J.S. Schools and School Districts § 163.

75-6004. Qualifications. Any person may be certified as a teacher when he satisfies the following qualifications:

- (1) He is eighteen (18) years of age or older but is not more than seventy (70) years of age;
- (2) He has a certificate of a licensed physician attesting to his satisfactory health;
- (3) He is a citizen of the United States except as provided in section 75-6005:
 - (4) He is of good moral and professional character;
- (5) He has completed the teacher education program of a unit of the Montana university system, or an essentially equivalent program at an accredited institution in the United States of equal rank and standing as that of any unit of the Montana university system, and such training shall be evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in subsection (4), section 75-6006; and
- (6) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support the constitution of the United States of America, the constitution of the state of Montana, and the laws of the United States and the state of Montana, and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order and undivided allegiance to the government of the United States of America."

History: En. 75-6004 by Sec. 74, Ch. 5, L. 1971.

Cross-Reference

Employment contract may contain oath, subscription, sec. 75-6102.

-Collateral References

Schools and School Districts 127.
78 C.J.S. Schools and School Districts 154 et seq.
47 Am. Jur. 373, Schools, §§ 109, 110.

Right of school authorities to make membersip or nonmembership in teachers'

association or other organization a condition of employment as a teacher, 72 ALR 1225.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Power of school authorities to transfer teacher from one school or district to another. 103 ALR 1382.

Oath of allegiance, validity of governmental requirement of. 18 ALR 2d 319.

Rejection of public schoolteacher because of disloyalty. 27 ALR 2d 487.

Tests of moral character or fitness as requisite to issuance of teacher's license or certificate. 96 ALR 2d 536.

75-6005. Noncitizen teacher certification. The superintendent of public instruction may issue a class 5 provisional certificate to a person who is not a citizen of the United States when:

- (1) the trustees of a district request certification of such person; and
 - (2) he otherwise qualifies for at least a class 5 provisional certificate.

The superintendent of public instruction also may issue an annual teacher certificate to a person who is not a citizen of the United States and who is an exchange teacher from a foreign country intending to return to that country.

History: En. 75-6005 by Sec. 75, Ch. 5, L. 1971,

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75-6006. Classifications of teacher certificates. The superintendent of public instruction shall issue teacher certificates and the board of education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

- (1) Class 1. Professional certificate. The professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program which includes a bachelor's degree and a minimum of one year of study beyond such degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, secondary instruction or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of education policy for teacher certification endorsement.
- (2) Class 2. Standard certificate. The standard certificate may be issued to an otherwise qualified applicant who has completed a four-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, secondary instruction or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of education policy for teacher certification endorsement.
- (3) Class 3. Administrative and supervisory certificate. The administrative and supervisory certificate may be issued to an otherwise qualified applicant who is the holder of a teacher certificate endorsed for teaching in the school or schools in which he would be an administrator or he would supervise. The applicant also shall possess the training and experience required by the policies of the board of education for an endorsement as superintendent, principal, or supervisor.
- (4) Class 4. Vocational, recreational, or adult education certificate. The vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields, and who can qualify under the policy of the board of education for the issuance of this classification of teacher certification.
- (5) Class 5. Provisional certificate. The provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of his intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a four-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, secondary instruction or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of education policy for teacher certification endorsement.

For purposes of evaluating the qualifications of applicants for teacher certificates, a year means the instructional period consisting of three quar-

ters or two semesters or other terms which are recognized as an academic year by any unit of the Montana university system or equivalent institution.

History: En. 75-6006 by Sec. 76, Ch. 5, L. 1971.

75-6007. Outstanding teacher certificates. No provisions of this title shall affect or impair the validity of any certificate that is in force on the effective date of this act, or the rights and privileges of the holders by virtue thereof, except that any certificates may be suspended or revoked for any of the causes and by the procedures provided by law.

Any holder of an elementary school standard certificate issued prior to July 1, 1959, under the previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the policies of the board of education until the holder qualifies for the class 2 standard certificate as provided in section 75-6006.

Any holder of a class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the policies of the board of education until the holder qualifies for the class 2 standard certificate as provided in section 75-6006.

History: En. 75-6007 by Sec. 77, Ch. 5,

Compiler's Note

The effective date of this act, referred to in the first paragraph, was January 26, 1971.

75-6008. Term of teacher certificates. Any teacher certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of five (5) school fiscal years, except that class 5 provisional certificates shall be valid for two (2) school fiscal years. The period of validity for any certificate shall begin on the first day of July immediately preceding the date of issue. Teacher certificates shall be renewed for similar periods of time on the basis of the board of education policies for teacher certification renewal.

History: En. 75-6008 by Sec. 78, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$130.
78 C.J.S. Schools and School Districts \$166.

75-6009. Fees for teacher certificates. Each person applying for the issuance or renewal of a teacher certificate shall pay a fee of two dollars (\$2) for each school fiscal year that the certificate will be valid. In addition to this fee, each person who has never held any class of Montana teacher certificate or for whom an emergency authorization of employment has never been issued, shall pay a filing fee of two dollars (\$2). Such fees shall be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the general fund.

History: En. 75-6009 by Sec. 79, Ch. 5, L. 1971.

75-6010. Suspension, revocation and denial—appeals. The board of education shall have the power and authority to suspend or revoke the teacher certificate of any person for any of the following reasons:

- (1) Any reason that would have required or authorized the denial of the teacher certificate to such person if it had been known at the time such certificate was issued;
- (2) By reason of incompetency, immorality, intemperance, physical inability, or conviction of a felony under state law; or
- (3) By reason of the failure of the certificate holder to comply with the terms of any contract between such holder and the trustees of a district without the consent of the trustees in writing or without good cause. Such breach of contract shall constitute unprofessional conduct.

Whenever a substantial reason for the suspension or revocation of the teacher certificate of any person is brought to the attention of the board of education, it shall afford the person an opportunity to defend himself and his qualifications against the charge before the board. The superintendent of public instruction shall give a thirty (30) day written notification to any person when the board of education intends to consider the suspension or revocation of his certificate. The board of education shall implement an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board of education policies.

After a full investigation and proper hearing, the board of education may suspend or revoke the person's teacher certificate, except that in cases of a first violation under subsection (3) above, the maximum penalty shall not be more than a suspension of the person's certificate for the current school fiscal year and the ensuing school fiscal year.

Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher certificate to a person, he may appeal the denial to the board of education. The appeal shall be heard in the same manner provided for in this section for suspension or revocation and in accordance with the policies of the board of education. The decision of the board of education shall be final.

History: En. 75-6010 by Sec. 80, Ch. 5, L. 1971.

Collateral References

Schools and School Districts = 132. 78 C.J.S. Schools and School Districts § 165. Moral unfitness, revocation of teacher's certificate for. 97 ALR 2d 827.

Bias of members of license revocation board. 97 ALR 2d 1210.

board. 97 ALR 2d 1210.

75-6011. Emergency authorization of employment. Any district may request from the superintendent of public instruction an emergency authorization of employment for a person as an instructor of pupils who is not the holder of a valid teacher certificate when such district cannot secure the services of a person holding a valid certificate. The person shall have previously held a valid teacher certificate or shall meet the standards of preparation prescribed by the policies of the board of education for and during such emergency. Such emergency authorization of employment shall indicate:

- (1) the district to which such authorization is issued:
- (2) the person whom the district is authorized to employ;
- the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ such person is given; and
- the school fiscal year for which such emergency authorization of employment is given.

Emergency authorization of employment of a person shall be valid for the school fiscal year identified on such authorization and may be renewed in accordance with the board of education policies. A fee of two dollars (\$2) and, if no teacher certificate or emergency authorization of employment has ever been issued for such person, a filing fee of two dollars (\$2) shall be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of section 75-6010.

History: En. 75-6011 by Sec. 81, Ch. 5, L. 1971.

CHAPTER 61

EMPLOYMENT OF TEACHERS, SUPERINTENDENTS AND PRINCIPALS

Section 75-6101. Definitions. 75-6102. Employment of teachers by contract. 75-6103. Teacher tenure. 75-6104. Termination of tenure teacher services. 75-6104. Termination of tenure teacher services.
75-6105. Notification of tenure teacher re-election.
75-6106. Teacher certification registration.
75-6107. Dismissal of teacher under contract.
75-6108. Duties of teacher.
75-6109. Power of teacher over pupils and undue punishment.
75-6110. Abuse of teachers.
75-6111. Attendance of state teachers' association annual session.
75-6112. Appointment and dismissal of district superintendent or county high school principal. 75-6113. Duties of district superintendent or county high school principal. 75-6114. Duties of principal. 75-6115. Short title. 75-6116. Declaration of policy and purpose. 75-6117. Definitions. 75-6118. Teachers' rights. 75-6119. Duty to negotiate and bargain.
75-6120. Unfair practices.
75-6121. Selection of teachers' representative.
75-6122. Ratification of agreements.
75-6123. Professional negotiation.
75-6124. Employer's right under other state laws. 75-6125. Court review. 75-6126. Penalty for violation.
75-6127. Planning for negotiating sessions closed to public.
75-6128. Operation and effect of act.

75-6101. Definitions. As used in this Title, unless the context clearly indicates otherwise:

"Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the

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superintendent of public instruction under the provisions of this Title and the policies adopted by the board of education, and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher also shall include any person for whom an emergency authorization of employment of such person has been issued under the provisions of section 75-6011.

"Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this Title and the policies adopted by the board of education and who has been employed by a district as a principal. For the purposes of this Title, any reference to a teacher shall be construed as including a principal, as herein defined.

"District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this Title and the policies adopted by the board of education and who has been employed by a district as a district superintendent.

History: En. 75-6101 by Sec. 82, Ch. 5, Cross-Reference
L. 1971. Cross-Reference
Smallpox vaccination, sec. 69-4515.

75-6102. Employment of teachers by contract. The trustees of any district shall have the authority to employ any person as a teacher, but only a person who holds a valid Montana teacher certificate or for whom an emergency authorization of employment has been issued that qualifies such person to perform the duties prescribed by the trustees for the position of employment. Each teacher shall be employed under written contract and each contract of employment shall be authorized by a proper resolution of the trustees and shall be executed in duplicate by the chairman of the trustees and the clerk of the district in the name of the district, and by the teacher.

No contract of employment with a teacher shall require such teacher to teach more than five (5) days a week or on any holiday recognized by section 75-7406. No deduction shall be made from a teacher's salary by reason of the fact that a holiday falls on a school day. Any teacher's contract made in conflict with the five-days-per-week provision of this section shall not be enforceable against the teacher.

Whenever the trustees of a county high school and the trustees of the elementary district where the county high school is located form a joint board of trustees under the provisions of section 75-5928, such joint board of trustees may execute a contract of employment with a teacher who shall serve both districts. When such a contract is executed, the two districts shall prorate the compensation provided by such contract on the basis of the total number of instructional hours expended by such teacher within each district.

Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in section 75-6004 and the teacher shall subscribe to such oath or affirmation before an officer authorized by law to administer oaths.

History: En. 75-6102 by Sec. 83, Ch. 5, valent to full compliance with the neces-L. 1971.

Cross-References

Military service, reemployment upon completion of, sec. 77-601 et seq.

Religious or partisan test or qualification prohibited, Const., Art. XI, sec. 9.

Compensation

A school board had no power to allow compensation to a teacher for the full period of twelve months, during two and a half months of which time no school work was required and she was left free to engage in other pursuits; a donation of public funds under the pretext of compensation being unlawful. Finley v. School District No. 1, 51 M 411, 414, 153 P 1010, distinguished in 95 M 498, 502, 27 P 2d

Ratification of Infomal Contract

Where teacher had taught school in same district for three consecutive years under an informal contract, although statute required such contracts to be in writing, the board of trustees, by accepting the benefits of the teacher's services and issuing warrants to her in payment thereof, ratified the contract; ratification was equisary formalities, and the contract was considered as valid from its inception. Day v. School District No. 21, 98 M 207, 211, 38 P 2d 595.

Union Security Clause

School trustees have no authority or power to discriminate between teachers as to the amount of salary because of their membership or lack of membership in a labor union; therefore, a union security clause in a contract offered schoolteachers was void; mandamus, not suit in contract, was appropriate form of relief for teachers. Benson v. School District No. 1, 136 M 77, 344 P 2d 117.

Collateral References

Schools and School Districts 2131, 134 et seq., 143, 144.

78 C.J.S. Schools and School Districts

§§ 161, 183 et seq., 218 et seq. 47 Am. Jur. 377 et seq., Schools, § 115 et

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Salary: services included in computing period of service for purpose of. 2 ALR 2d

75-6103. Teacher tenure. Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent, the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher, unless:

- (1) the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of section 75-6104; or
- (2) the teacher will attain the age of sixty-five (65) years before the ensuing first day of September and the trustees have notified the teacher in writing by the first day of April that his services will not be needed in the ensuing school fiscal year, except that the trustees may continue to employ such a teacher from year to year until the school fiscal year following his seventieth (70th) birthday.

History: En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971.

Conditions of Automatic Re-employment

Automatic re-employment meant by former section was re-employment under the same terms and conditions as the preceding year's employment. Moses v. School District No. 53, 107 M 300, 305, 86 P 2d 407.

Demotion of Teacher

Where teacher, after seven years of teaching in town school was assigned to a

rural ungraded school having five pupils and plaintiff refused assignment, the new assignment in effect was a demotion which required the same procedure as a removal or dismissal under this section, and plaintiff properly refused to accept it, the purpose of the Teacher Tenure Act being not merely to insure teaching employment, but also security to teachers in the position, rank, grade or status they have attained. Smith v. School District No. 18, 115 M 102, 109, 139 P 2d 518.

Nature of Right

A teacher's tenure is a substantial, valuable and beneficial right, which cannot be taken away except for good cause; number of hours teacher may teach in a day is not a factor in determining her right to tenure. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 214.

Collateral References

Schools and School Districts 133.6 to

78 C.J.S. Schools and School Districts §§ 180, 181, 197.

47 Am. Jur. 388 et seq., Schools, § 127 et seq.

Right of teacher to compensation while school is closed. 6 ALR 742; 17 ALR 1224 and 21 ALR 741.

Services included in computing period of service for purpose of teachers' seniority. 2 ALR 2d 1033.

DECISIONS UNDER FORMER LAW

Retroactivity of General School Code of 1913

The General School Code of 1913 was not retroactive and a schoolteacher was not entitled to take advantage of the provisions of the tenure law where her complaint was based on a contract made prior to the passage of the Code of 1913. Falligan v. School District No. 1, 54 M 177, 169 P.803.

75-6104. Termination of tenure teacher services. Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of subsection (1) of section 75-6103, they shall notify such teacher in writing before the first day of April of such termination. Any tenure teacher who receives a notice of termination may request, in writing ten (10) days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within ten (10) days after the request. Within ten (10) days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within ten (10) days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent and, subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this Title.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971.

Closing of School

Where teacher not notified that her services would not be required for next succeeding year, brought action to recover the amount she would have received if reemployed, having taught for three consecutive years entitling her to automatic re-employment under this section, because school was closed on the enrollment having fallen to two pupils, the board under Sec. 1044, R. C. M. 1935 (since repealed), had the power to close the school and void the contract, as well as under a clause of her contract providing that if school closed for lack of attendance the contract should be considered at an end. Moses v. School District No. 53, 107 M 300, 305, 86 P 2d 407.

Nepotism, Effect on Tenure

Where the father, mother and uncle of the only pupils attending school were the sole persons eligible to serve as trustees, the employment of the mother who, though elected as trustee preferred to act as teacher and did not qualify as trustee, was illegal under section 59-519, condemning nepotism; this section presupposing capacity to hold the position both legally and in fact, she therefore could not be deemed re-elected thereunder in the absence of notice that her services would be no longer required. State ex rel. Hoagland v. School District No. 13, 116 M 294, 298, 151 P 2d 168.

Notice of Dismissal

Provision requiring notice of termination became a part of the contract of employment, binding upon both the teacher and the board of trustees; the notice of dismissal must be clear and explicit. McBride v. School District No. 2, 88 M 110, 112, 290 P 252, explained in 116 M 294, 299, 151 P 2d 168.

The notice of dismissal which must be given a teacher entitled to the benefits of the tenure act, is one based upon action by a majority of the board of trustees taken at a meeting thereof; hence, where two of the three members of the board decided in casual conversations at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismissal. Day v. School District No. 21, 98 M 207, 211, 38

Collateral References

Schools and School Districts 133.9. 78 C.J.S. Schools and School Districts § 180.

47 Am. Jur. 396, Schools, § 139.

Notice of intention to discharge teacher, or not to renew contract, sufficiency under statutes requiring such notice. 92 ALR 2d 751.

75-6105. Notification of tenure teacher re-election. The trustees shall provide written notice to all tenure teachers who have been re-elected by the first day of April. Any tenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any tenure teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election, and failure to so notify the trustees within twenty (20) days shall constitute conclusive evidence of his nonacceptance of the tendered position.

History: En. 75-6105 by Sec. 86, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 233.15. 78 C.J.S. Schools and School Districts §§ 196,197.

75-6106. Teacher certification registration. Any person employed as a teacher, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher does not register his certificate with the county superintendent within sixty (60) calendar days after the teacher begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for sixty (60) calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

A teacher employed by a joint district shall register his certificate with the county superintendent of the county performing the budgeting functions for the joint district, as defined in section 75-6720.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971.

75-6107. Dismissal of teacher under contract. The trustees of any district may dismiss a teacher before the expiration of his employment

contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees. Any teacher who has been dismissed may in writing within ten (10) days appeal such dismissal to the county superintendent; following such appeal a hearing shall be held within ten (10) days. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal.

History: En. 75-6107 by Sec. 88, Ch. 5, L. 1971; amd. Sec. 1, Ch. 327, L. 1971.

Appeals to County School Superintendent

Writ of prohibition did not lie against the county superintendent of schools to prevent her from acting in an appeal by a teacher who had been denied reemployment by the school board since appeals from such dismissals go to the superintendent. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209.

Dismissal of Superintendent

Section providing specifically for appeal to the county superintendent from an order dismissing a teacher had no application to dismissal of a district school superintendent, the latter order being governed by section providing generally for appeal to the county superintendent from decisions of school officers and boards. State ex rel. Howard v. Ireland, 114 M 488, 500, 138 P 2d 569, distinguished in 120 M 63, 75, 180 P 2d 472.

Right of Appeal as Part of Contract

The provision of the school law that in case of a dismissal of a teacher before the expiration of her written contract, she may appeal to the school authorities, becomes as much a condition of the contract as if expressly written therein. Kelsey v. School District No. 25, 84 M 453, 458, 276 P 26, explained in 114 M 488, 499, 138 P 2d 569.

Under former statute authorizing dismissal for "violation of rules," teacher could be discharged only for violation of trustees' rules, which rules were made part of her contract by reference, and not for violation of high school superintendent's rules. Hovland v. School District No. 52, 128 M 507, 278 P 2d 211, 212.

Want of Jurisdiction

Where no meeting of school board, either special or regular, was held prior to summary dismissal of schoolteacher on ground of incompetency, board's dismissal of teacher was void for want of jurisdiction. Wyatt v. School District No. 104, 148 M 83, 417 P 2d 221, 223, 225, 22 ALR 3d 1039.

Collateral References

Schools and School Districts 141.

78 C.J.S. Schools and School Districts §§ 201, 202, 209, 217.

47 Am. Jur. 386, Schools, §§ 125, 126.

Negligence or incompetency as a ground for discharge of schoolteacher. 49 ALR

Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Marriage of teacher as ground of removal or discharge. 81 ALR 1033 and 118 ALR 1092.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Dismissal of public schoolteacher because of disloyalty. 27 ALR 2d 487.
Assertion of immunity against self incrimination as ground for discharge of teacher. 44 ALR 2d 799.

Request for hearing, sufficiency under statutes requiring hearing on request before discharge. 89 ALR 2d 1018.

Right to dismiss public schoolteacher on ground that services are no longer needed. 100 ALR 2d 1141.

Incompetency: what constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public schoolteacher. 4 ALR 3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 ALR 3d 1047.

75-6108. Duties of teacher. Any teacher under contract with a district shall:

(1) conform to and enforce the laws, board of education policies, and the policies of the trustees of the district;

- (2) utilize the course of instruction prescribed by the trustees;
- (3) keep, in a neat and businesslike manner, a teacher's register in the form and on the blanks prescribed by the superintendent of public instruction;
- (4) immediately after the conclusion of each school instructional year and before the tenth (10th) day of July, prepare an annual report in the manner and on the forms prescribed by the superintendent of public instruction which shall include the pupil attendance and absence data from his teacher's register that is necessary to calculate ANB, and such report shall be submitted to:
 - (a) the district superintendent, if there be one,
- (b) the principal of the school, if there be one and there is no district superintendent, or
- (c) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal;
- (5) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books and supplies; and
 - (6) provide moral and civic instruction by:
- (a) endeavoring to impress the pupils with the principles of morality, truth, justice and patriotism;
 - (b) teaching the pupils to avoid idleness, profanity and falsehood;
- (c) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities and dignity of American citizenship.

The trustees shall be authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsections (1) or (2) above until such teacher does comply with such provisions.

The trustees shall not pay any teacher his last month's salary until he-has provided a complete and accurate annual report to the required person, as determined by such person, and as required in subsection (4) of this section.

History: En. 75-6108 by Sec. 89, Ch. 5, L. 1971.

Cross-Reference

Abused or neglected child, duty to report, sec. 10-902.

Collateral References

Schools and School Districts 144(1), 147.

78 C.J.S Schools and School Districts §§ 218, 237.
47 Am. Jur. 375, Schools, § 111.

Duty of teacher to perform services other than those which pertain to instruction, 38 ALR 1414.

75-6109. Power of teacher over pupils and undue punishment. Any teacher shall have the authority to hold any pupil to a strict accountability for any disorderly conduct in school, on the way to or from school, or during intermission or recess. Whenever a teacher shall deem it necessary to inflict corporal punishment in order to maintain orderly conduct of a pupil, he shall administer such corporal punishment without undue anger and only in the presence of the principal, if there be one. Before any corporal punishment is administered, the parent or guardian shall be notified of

the teacher's intention to so punish his child; except that in cases of open and flagrant defiance of the teacher or of the authority of the school, the teacher may administer corporal punishment without giving such notice.

Any teacher in a district not employing a district superintendent or a principal of the school where the teacher is assigned shall have the authority to suspend a pupil for good cause. Where a district superintendent or principal is employed only he shall have the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, he shall notify the trustees immediately of such action, and the trustees shall meet as soon as practicable to consider the suspension action of the teacher.

It shall be the duty of any teacher to report the truancy or incorrigibility of any pupil to the district superintendent, principal, or the trustees, whichever is applicable.

Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined not more than one hundred dollars (\$100).

History: En. 75-6109 by Sec. 90, Ch. 5, L. 1971.

Cross-References

Confidential relationship between student and school personnel, sec. 93-701-4. Duties of pupils, sanctions, sec. 75-6310.

Suspension and expulsion of pupil, sec. 75-6311.

Collateral References

Schools and School Districts 147, 169, 176, 177.
78 C.J.S. Schools and School Districts

§§ 237, 238; 79 C.J.S. Schools and School Districts §§ 493, 502. 47 Am. Jur. 375, 426 et seq., Schools,

§§ 111, 173 et seq.

Duty of teacher to perform services other than those which pertain to instruction. 38 ALR 1414.

Right to discipline pupil for conduct away from school grounds. 41 ALR 1312.

Personal liability of school authorities for dismissal or suspension of pupil. 42 ALR 763.

Teacher's civil liability for administering corporal punishment to pupil. 43 ALR 2d 469.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis. 89 ALR 2d 396.

75-6110. Abuse of teachers. Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than twenty-five dollars (\$25), nor more than five hundred dollars (\$500).

History: En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971.

Cross-Reference

Abuse of teacher a misdemeanor, sec. 94-35-195.

Collateral References

Schools and School Districts 273. 79 C.J.S. Schools and School Districts § 512.

75-6111. Attendance of state teachers' association annual session. When the trustees of a school district close the schools of the district for the annual session of the state teachers' association, a teacher may (1) attend the annual session without loss of salary, or (2) work at his school and perform duties related to his position of employment as may be prescribed by the trustees, without loss of salary.

If a teacher does neither (1) nor (2) above, he shall not be paid.

History: En. 75-6111 by Sec. 92, Ch. 5, L. 1971; amd. Sec. 1, Ch. 200, L. 1971.

Cross-Reference

Traveling expenses of officers attending meetings, sec. 25-508.

Collateral References
Schools and School Districts
78 C.J.S. Schools and School Districts
169.

75-6112. Appointment and dismissal of district superintendent or county high school principal. The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees, and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts, in the name of the districts, and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than three (3) years and, after the second successive contract, the contract shall be deemed to be renewed for a further term of one (1) year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal of their intent to terminate his services at the expiration of his current contract not later than the first day of February of the last year of such contract.

Whenever a joint board of trustees employs a person as the district superintendent, the elementary district and the county high school shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not com-

pensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971.

Hearing on Removal

Dismissal of superintendent without hearing was void as exceeding trustees' jurisdiction, notwithstanding that no statute required hearing. State ex rel. Howard v. Ireland, 114 M 488, 495, 138 P 2d 569.

A hearing as to the fitness of a district school superintendent to act as such presupposes that charges were preferred, that notice had been given the incumbent to enable him to prepare for and refute the charges, that evidence was taken at the hearing with opportunity for cross-examination of the witnesses—all for the purpose of determining in a judicial manner the truth or falsity of the charges. State

ex rel. Howard v. Ireland, 114 M 488, 495, 138 P 2d 569.

Where an order of a board of trustees dismissing a district school superintendent for cause was void because he had not been granted a hearing, which order on appeal to the county superintendent was reversed, whereupon the board appealed to the state superintendent of instruction who found in favor of the board, the action of the board and the decision of the state superintendent were void for want of jurisdiction. State ex rel. Howard v. Ireland, 114 M 488, 501, 138 P 2d 569.

Collateral References

Schools and School Districts 233, 140. 78 C.J.S. Schools and School Districts \$\ 170, 201.

- 75-6113. Duties of district superintendent or county high school principal. The district superintendent or county high school principal shall be the executive officer of the trustees and, subject to the direction and control of the trustees, he shall:
- (1) have general supervision of all schools of the district and the personnel employed by the district;
- (2) implement and administer the policies of the trustees of the district;
- (3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of sections 75-7503 and 75-7504;
- (4) select all textbooks and submit such selections to the trustees for their approval in accordance with the provisions of section 75-7603;
- (5) select all reference and library books and submit such selections to the trustees for their approval in accordance with provisions of section 75-7519;
- (6) have general supervision of all pupils of the district, and shall enforce the compulsory attendance provisions of this Title, and shall have the authority to suspend for good cause any pupil of the district until the trustees may consider such suspension;
- (7) report the cumulative pupil attendance and pupil absence of the district and any other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent or county superintendents when reporting for a joint district, immediately after the conclusion of the school instructional year and before the tenth (10th) day of July; and

(8) perform any other duties in connection with the district as the trustees may prescribe.

History: En. 75-6113 by Sec. 94, Ch. 5, L. 1971.

Cross-References

Confidential relationship between student and school personnel, sec. 93-701-4. Duties of pupils, sanctions, sec. 75-6310. Suspension and expulsion of pupil, sec. 75-6311.

Collateral References

Schools and School Districts 237. Schools and School Districts 237.

47 Am. Jur. 375, Schools, § 111.

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Marriage or other domestic relations as ground for exclusion of pupil from public school. 63 ALR 1164.

Regulations as to school fraternities. 10 ALR 3d 389.

Validity of regulation by school authorities as to clothes of pupils, 14 ALR 3d 1201

75-6114. Duties of principal. Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of section 75-6113, and shall have general supervision of such school and the personnel assigned to such school.

History: En. 75-6114 by Sec. 95, Ch. 5, L. 1971.

75-6115. Short title. Sections 75-6115 through 75-6128 shall be known as the "Professional Negotiations Act for Teachers."

History: En. Sec. 1, Ch. 424, L. 1971.

Collateral References

Schools and School Districts 134 et seq.

78 C.J.S. Schools and School Districts § 183 et seq.

47 Am. Jur. 372 et seq., Schools, § 108 et seq.

Declaration of policy and purpose. In pursuance of the duty imposed upon it by the constitution to provide a system of free public schools and to adopt all means necessary and proper to secure to the people the advantages and opportunities of education, the legislative assembly hereby declares that it recognized teaching as a profession which requires special educational qualifications and that to achieve high quality education it is indispensable that good relations exist between teaching personnel and their governing boards. It is, therefore, the policy of this state to recognize the rights of professional school employees to form, join, or assist professional employees' organizations to negotiate with their governing boards regarding the terms and conditions of professional service and to confer and consult in other matters for the purpose of establishing, maintaining, protecting and improving educational standards, and to establish procedures which will facilitate and encourage amicable settlement of disputes. It is further recognized that the authority of public school district boards of trustees is established by law and a district board of trustees has final authority for determining policies for the operation of public schools under its jurisdiction which are not inconsistent with law.

History: En. Sec. 2, Ch. 424, L. 1971.

- 75-6117. Definitions. As used in this act, unless the context clearly requires otherwise:
- (1) "Teacher" means an individual certificated in class 1, 2, 4 or 5 as provided in section 75-6006, but shall not include such certificated individuals who are not currently under contract to perform classroom teaching; however "teacher" shall include principals certificated in class 3 who so elect as provided in subsection(3);
 - (2) "Employer" means a school district as defined in section 75-6501.
- (3) "Appropriate unit" means all of the teachers employed by a single employer. Principals employed by an employer may elect to be included in the appropriate unit or may elect to establish a separate appropriate unit of principals;
 - (4) "Board" means any public school board of trustees;
- (5) "Strike" means any work stoppage by a teacher or teachers which interferes with the operation of a school or schools, which includes abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing an employer to change any terms or conditions relating to the employer-teacher relationship;
- (6) "Teacher organization" means any organization of employees which includes teachers in membership;
- (7) "Representative of teachers" means a representative elected pursuant to the provisions of section 75-6121.

History: En. Sec. 3. Ch. 424. L. 1971.

Teachers' rights. It shall be lawful for teachers to organize, form, join or assist in employee organizations or to engage in lawful activities for the purpose of collective bargaining or to bargain collectively through representatives of their own free choice. Teachers shall also have the right to refrain from any or all such activity but shall be bound by a professional negotiations agreement involving the appropriate unit of which they are a member. It shall be the duty of an employer to meet and confer on any proposal advanced by a representative of teachers, or by a teacher or group of teachers if no representative of teachers has been selected, if such proposal does not endeavor to amend the terms of a professional negotiations agreement then in effect, and nothing in this act shall be construed to diminish such duty. However, a representative of teachers selected as provided by this act, shall be the exclusive representative of all the teachers in the appropriate unit to meet, confer or negotiate upon all matters permitted in section 75-6119 and such teachers shall not negotiate individually.

History: En. Sec. 4, Ch. 424, L. 1971.

Collateral References

Union organization and activities of public employees. 31 ALR 2d 1142.

75-6119. Duty to negotiate and bargain. It shall be the duty of all employers acting as a board, or acting by and through a bargaining agent designated or employed by the employer, and all teachers, or a repre-

sentative of teachers, to meet and confer for professional negotiations purposes at the request of either, except as provided by this act, to discuss matters relating directly to the employer-teacher relationship such as salary, hours and other terms of employment, and to negotiate and bargain for agreement on such matters. The matters of negotiation and bargaining for agreement shall not include matters of curriculum, policy of operation, selection of teachers and other personnel, or physical plant of schools or other facilities, however nothing herein shall limit the obligation of employers to meet and confer as provided in section 75-6118. Teachers under a professional negotiations agreement, or the representative of teachers, shall not demand that professional negotiation conferences begin until after November 1 of the last year such agreement is effective, but, if professional negotiation is desired, must serve written notice of intention to negotiate collectively upon the employer not later than November 1 of such year stating specifically the items to be negotiated. If such notice is not served, the employer shall not be required to negotiate any terms of the employer-teacher relationship for the following school year. Professional negotiation agreements in effect at the time this act becomes effective shall continue to their expiration. No professional negotiation agreement shall extend for a term of more than two (2) years.

History: En. Sec. 5, Ch. 424, L. 1971.

Compiler's Note

The effective date of this act was July 1, 1971.

75-6120. Unfair practices. (1) Employers, their agents or representatives, are prohibited from the following unlawful acts:

- (a) Interfering with, restraining or coercing teachers in any manner in their right of self-organization or selection of a representative;
- (b) Discriminating in regard to conditions of employment when the purpose is to discourage membership in a teacher organization;
- (c) Refusing to meet, confer or negotiate in good faith with teachers or the duly elected representative of an appropriate unit of teachers or with a panel selected upon impasse as provided in section 75-6123, to discuss or negotiate upon any matter dealing directly with the employer-teacher relationship as provided in section 75-6118;
- (d) Refusing to reduce to writing and sign a professional negotiation agreement arrived at through negotiation and discussion;
- (2) Teachers or teacher organizations, their agents or representatives, are prohibited from the following unlawful acts:
- (a) Restraining or coercing teachers in violation of their rights guaranteed under section 75-6118 or interfering in the conduct of an election as provided in this section.
- (b) Refusing to reduce to writing or sign a professional negotiation agreement arrived at through negotiation and discussion;
- (c) Instituting, maintaining or participating in a strike or boycott against any employer, or picketing any school or school facility to further

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or to induce a strike or boycott because of any controversy; engaging in, or inducing or encouraging any individual to engage in, a strike or refusal to handle goods or perform services or threatening, coercing or restraining any individual where the object thereof is to force or require any employer to discontinue doing business with such individual or to force or require an employer to recognize a teacher representative not selected as provided in section 75-6121.

(d) Refusing to meet, confer or bargain in good faith with an employer or its agents or with a panel selected upon impassee as provided in section 75-6123, to discuss or bargain upon any matter dealing directly with the employer-teacher relationship as defined in section 75-6119.

History: En. Sec. 6, Ch. 424, L. 1971.

75-6121. Selection of teachers' representative. Any teacher organization whose membership includes a majority of the teachers in the appropriate unit, as verified by affidavit of the secretary of the teacher organization delivered to the employer, shall be recognized by the employer as the representative of teachers in the appropriate unit, however, (1) if the membership of more than one (1) teacher organization desiring to represent the appropriate unit includes a majority of the teachers in the appropriate unit or (2) if no teacher organization's membership includes a majority of the teachers in the appropriate unit but thirty (30) per cent or more of the teachers in the unit have petitioned the board, in writing, for a particular representative, or (3) if the employer questions whether a majority of the teachers in the appropriate unit desire the representation of a teacher organization determined by organization membership and applies for an election, the board or his representative shall conduct an election by secret ballot to determine the representative to represent the teachers in the appropriate unit. The board shall give not less than ten (10) nor more than thirty (30) days' written notice of the time and place of such election by mailing to all teachers in the appropriate unit and by posting in the school or schools where such teachers teach. The board shall include on the ballot the names of all teacher organizations verified by affidavit to include a majority of the teachers in the appropriate unit, or if no teacher organization claims a majority of such teachers, then the names of all prospective representatives offered by the petition of thirty (30) per cent or more of the teachers in the unit received by the board not less than five (5) days prior to the date for election, and in either event the choice of "No representative." One candidate must receive a majority of the votes cast to be recognized as the representative of the teachers in the appropriate unit. If "No representative" receives a majority, no representative shall be recognized. If two (2) or more prospective representatives are named on the ballot and no choice receives a majority, a second election, after notice, shall be conducted naming the two (2) proposed representatives receiving the greatest number of votes in the first election. A determination under this section by secret ballot shall remain in effect for one (1) year after the date of the election and thereafter until the employer or thirty (30)

per cent or more of the teachers in the appropriate unit shall apply to the board for another election.

History: En. Sec. 7, Ch. 424, L. 1971.

75-6122. Ratification of agreements. All professional negotiation agreements reduced to writing and executed by an employer and the representative of teachers must be ratified by a majority of the teachers in the appropriate unit before becoming binding upon the parties. If a professional negotiation agreement is executed by a professional negotiation agent of the employer it must be ratified by a majority of the board of the employer.

History: En. Sec. 8, Ch. 424, L. 1971.

75-6123. Professional negotiation. If, after fifty (50) days following the commencement of negotiation between an employer, and a negotiating agent designated by the employer, and teachers, or a representative of teachers, an agreement cannot be reached upon any proper issue or issues presented, either party may notify the other in writing that it desires to present the issue or issues to a panel of three (3) persons, resident of the state in which the employer is located, one (1) to be selected by the employer, one (1) to be selected by the representative of teachers, and the third to be selected by the first two (2) named, who shall act as chairman of the panel. Each party shall select its panel member within ten (10) days after such notification. If the members selected by the parties are unable to agree upon the third member within ten (10) days from the date of their selection, the senior district judge of the county in which the employer is located shall submit the names of five (5) persons to the parties at impasse and each party shall in the presence of such senior district judge alternately strike one (1) name until only one (1) shall remain. The teachers or representative of teachers shall strike the first name. The person so remaining shall be the third panel member. Negotiation shall thereupon continue before the panel. The panel may take oral testimony under oath and shall consider all documents and arguments presented to it. If an agreement has not been reached by the parties within twenty (20) days after presentation before the panel has comemenced, the panel shall make findings of fact and recommendations concerning the issues discussed and shall serve a copy upon both parties within five (5) days after such twenty (20) day period. Within five (5) days following mailing of such findings and recommendations, the parties must notify the county superintendent of schools and each other whether or not they accept the findings and recommendations of the panel, and unless both parties do so accept, the panel shall publicize its findings of fact and recommendations in such manner as it deems advisable. Not less than five (5) days nor more than ten (10) days after such publication of findings of fact and recommendations of the panel, the parties shall again notify the county superintendent of schools and each other whether or not they accept the recommendations of the panel. The parties may further negotiate and settle the issues at any time before or after the recommendations of the panel. Each party shall pay the expenses of its selected member of the panel and both parties shall share equally the expenses of the third member of the panel and the publication costs.

History: En. Sec. 9, Ch. 424, L. 1971.

75-6124. Employer's right under other state laws. Nothing contained in this act shall impair the employer's right to hire teachers or to discharge teachers for cause consistent with other state laws.

History: En. Sec. 10, Ch. 424, L. 1971.

75-6125. Court review. An employer, a duly elected representative of teachers, or if no representative of teachers has been selected, then a teacher or group of teachers, may institute proceedings in the district court for the county in which the employer is located to restrain the commission of any unlawful or unfair practice as provided in this act. Any teacher acting in violation of any court order to enforce the provisions of this act shall be subject to suspension without pay or dismissal at the discretion of the employer.

History: En. Sec. 11, Ch. 424, L. 1971.

75-6126. Penalty for violation. Any teacher who violates the provisions of section 75-6120(2)(c) shall forfeit his salary for every day that he is in violation.

History: En. Sec. 12, Ch. 424, L. 1971.

75-6127. Planning for negotiating sessions closed to public. Professional negotiating sessions between employers and teachers, or their representatives, may be open to the public, but meetings of school boards wherein professional negotiating proposals are discussed prior to any professional negotiating sessions shall be closed to the public.

History: En. Sec. 13, Ch. 424, L. 1971.

75-6128. Operation and effect of act. This act shall not operate so as to annul, modify or preclude the renewal or continuation of any lawful agreement heretofore or hereafter entered into between a board and a teacher organization. This act shall not preclude the modification of any existing agreement upon the request of either the board or the teacher organization in accordance with the procedure provided in this act.

History: En. Sec. 14, Ch. 424, L. 1971.

Separability Clause

Section 15 of Ch. 424, Laws 1971 read "This act shall be severable, and should

any part or provision hereof be declared unconstitutional by a competent court, such declaration will not invalidate the remaining provisions hereof."

CHAPTER 62

TEACHERS' RETIREMENT SYSTEM

Section 75-6201. Definitions.

75-6202. Retirement system.75-6203. Retirement board.75-6204. Per diem and expenses.

75-6205. Powers and duties.

75-6206. Financial administration of moneys.
75-6207. Method of financing.
75-6208. Benefits.
75-6209. Active membership.

75-6210. Inactive membership.

75-6211. Membership termination.
75-6212. Membership application and creditable service.

75-6213. Creditable service for out-of-state employment and before September,

75-6214. Duties of employer.

75-6215. Exemption from taxation, execution and assignment.

75-6216. Guarantee by state.

75-6217. Protection against fraud. 75-6218. Discontinuance of former retirement system.

75-6201. Definitions. As used in this Title, unless the context clearly indicates otherwise:

- (1) "Retirement system" means the teachers' retirement system of the state of Montana provided for in section 75-6202.
- "Retirement board" means the retirement system's governing board provided by section 75-6203.
- (3) "Employer" means the state of Montana, trustees of any district, or other agency or subdivision of the state which employs a person who is designated a member of the retirement system.
- "Member" means any person who has an individual account in the annuity savings fund; an active member is any person included under the provisions of section 75-6209; an inactive member is any person included under the provisions of section 75-6210.
- (5) "Beneficiary" means any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by the retirement sys-
- (6)"Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of section 75-6209.
- (7) "Prior service" means employment of the same nature as service defined in subsection (6) of this section but rendered before September 1, 1937.
 - "Creditable service" is that service defined by section 75-6212. (8)
- "Regular interest" means interest at four per cent (4%) per annum compounded annually, or at such other rate as may be set by the retirement board in accordance with subsection (2) of section 75-6206.
- "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.
- (11) "Earnable compensation" means the full rate of the compensation, pay or salary that would be payable to a member if he worked the full normal working time. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

- (12) "Average final compensation" means the average of the earnable compensation of any three (3) consecutive years on which the five percent (5%) contribution has been made by the member.
- (13) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions. All annuities shall be paid in equal monthly installments. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.
- (14) "Pension" means the payments made to a beneficiary for life which are paid into the pension fund derived from money accumulated by employers. All pensions shall be paid in equal monthly installments.
 - (15) "Retirement allowance" means the annuity plus the pension.
- (16) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity and computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.
- (17) "Pension reserve" means the present value of all payments to be made on account of a pension and computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.
- (18) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.
- (19) "Former retirement system" means the retirement system established under sections 1113 to 1132 inclusive, of the Revised Codes of Montana, 1935.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971.

Compiler's Notes

The former retirement system (sections 1113 to 1132, Revised Codes of Montana, 1935) referred to in subsection (19) was discontinued by Sec. 12, Ch. 87, Laws 1937, and Sec. 6, Ch. 28, Laws 1949, and Sec. 2, Ch. 270, Laws 1959.

Although recognized as the state teachers' retirement system by section 75-6202, the 1937 chapter and amendments thereto were repealed by Sec. 496, Ch. 5, Laws 1971.

Cross-References

Community college teachers eligible for retirement system benefits, sec. 75-8120.

Supplemental Social Security coverage for teachers, sec. 59-1109 et seq.

Constitutionality

Provisions of 1945 amendment to former subsection defining accumulated contributions were unconstitutional as impairing teacher's contractual rights where they deprived withdrawing member of interest to which she would have been entitled under law prior to amendment. Clarke v. Ireland, 122 M 191, 199 P 2d 965, 970.

Contractual Nature of Rights

The Teachers' Retirement Act of 1937 was one providing for payments of annuity rather than a pension and created a contractual annuity. Clarke v. Ireland, 122 M 191, 199 P 2d 965, 969.

Collateral References

Schools and School Districts \$231 et seq.
40 Am. Jur. 973, Pensions, § 17.

75-6202. Retirement system. The state teachers' retirement system created under the provisions of chapter 87, Laws of 1937 is hereby recognized as the state teachers' retirement system of the state of Montana

and no provisions of this act shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of chapter 87, Laws of 1937 or any subsequent amendment thereto. Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, invest its funds, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this Title.

History: En. 75-6202 by Sec. 97, Ch. 5, in this section, was repealed by Sec. 496, L. 1971.

Compiler's Note

Chapter 87, Laws of 1937, recognized as the state teachers' retirement system

Cross-Reference

Social security coverage not to prejudice retirement rights, sec. 59-1112.

75-6203. Retirement board. The governing board of the Teachers' Retirement System of the State of Montana shall be:

- (1) the superintendent of public instruction;
- (2) two (2) persons appointed from the teaching profession who are members of the retirement system; and
 - (3) two (2) persons appointed as representatives of the public.

Each appointed member of the governing board shall be appointed by the governor to serve a term of four (4) years and until his successor has been appointed and qualified. When a vacancy occurs in the position of an appointed member of the governing board, the governor shall appoint a person to serve the unexpired term for such position.

The attorney general shall be the legal adviser of the governing board. Each appointed member of the governing board shall take and subscribe to the oath prescribed by section 1 of article XIX of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

A majority of the members of the governing board shall constitute a quorum for the transaction of any business.

History: En. 75-6203 by Sec. 98, Ch. 5, L. 1971.

Cross-References

Board continued in department of administration, sec. 82A-212.

Bonds of state officers and employees, sec. 6-105 et seq.

75-6204. Per diem and expenses. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive twenty dollars (\$20) per day and his necessary and actual expenses incurred for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. Any appointed member's per diem reimbursement for any fiscal year shall not be more than three hundred dollars (\$300). All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971.

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- 75-6205. Powers and duties. The retirement board shall have the power and it shall be its duty to administer and operate the retirement system within the limitations prescribed by this Title. To this end, it shall be the duty of the retirement board to:
- (1) establish rules and regulations necessary for the proper administration and operation of the retirement system;
 - (2) elect a chairman from its membership;
 - (3) appoint a secretary who may be one (1) of its members;
- (4) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system;
- (5) approve or disapprove all expenditures necessary for the proper operation of the retirement system;
- (6) keep a record of all its proceedings which shall be open to public inspection;
- (7) publish a biennial report by the first day of January of each year the legislative assembly meets that shall report in detail the fiscal transactions for the two (2) fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system and the last fiscal year balance sheet showing the assets and liabilities of the retirement system, and submit such biennial report to the governor and furnish copies to the legislative assembly;
- (8) when the retirement board deems it necessary, designate a medical board to be composed of three physicians, who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system;
- (9) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;
- (10) designate an actuary to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which shall include establishing mortality and service tables and making an actuarial investigation at least once every five (5) years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;
- (11) prepare an annual valuation of the assets and liabilities of the retirement system;
- (12) determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of section 75-6209;
- (13) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;
- (14) adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:
- (a) One (1) year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than one

- (1) year's creditable service shall be awarded for service during the same school fiscal year.
- (b) A proportion of a year's creditable service shall be allowed for part-time service. An equitable proration of a year's creditable service shall be awarded for part-time service.
- (c) Not more than one (1) month's creditable service shall be awarded for one (1) or more continuous months of absence without pay.
- (15) grant retirement, disability, and other benefits under the provisions of section 75-6208;
- (16) annually determine the rate of regular interest as prescribed in section 75-6206;
- (17) establish and maintain the funds of the retirement system in accordance with the provisions of section 75-6207; and
- (18) perform such other duties and functions as are required to properly administer and operate the retirement system.

History; En. 75-6205 by Sec. 100, Ch. 5, L. 1971.

- 75-6206. Financial administration of moneys. The retirement board shall be the trustees of all moneys collected for the retirement system and as such trustees they shall provide for the financial administration of the moneys in the following manner:
- (1) The moneys shall be invested and re-invested by the state board of land commissioners.
- (2) The retirement board annually shall establish the rate of regular interest on the basis of the interest earnings of the retirement system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.
- (3) The retirement board annually shall divide among the several funds of the retirement system an amount equal to the average balance of such funds during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of subsection (3)(e) of section 75-6207, the amount to be credited to each fund shall be allocated from the interest and other earnings on the moneys of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense fund under the provisions of subsection (5)(b) of section 75-6207.
- (4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which said moneys are invested. All expenditures from such moneys shall be made only upon claims signed by two (2) persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the state controller as his authority for approving such claims.
- (5) Except as herein provided no member of the retirement board nor any of its employees shall have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system.

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No member of the retirement board nor any of its employees shall directly or indirectly for himself or as an agent in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board. No member of the retirement board nor any of its employees shall become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

- (6) The retirement board may in its discretion transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of seven (7) years. No right of the member shall be jeopardized by such transfer and the amount shall be transferred back to the member's annuity savings account upon his request.
- (7) All the funds established by section 75-6207, except the expense fund, shall be accounts in the agency fund of the treasury fund structure of the state. The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(f).

Investment functions of board transferred, sec. 82A-205(5).

Investments in Emergency Relief Warrants

Under Ch. 87, Laws 1937, retirement board had supervision over the investment

of funds mentioned therein and might in its discretion invest such funds in emergency relief warrants issued under Sec. 2, Ch. 85, Laws 1937. Kraus v. Riley, 107 M 116, 122, 80 P 2d 864.

Collateral References

Schools and School Districts 146.
78 C.J.S. Schools and School Districts 235.

- 75-6207. Method of financing. The retirement board shall establish and maintain the following funds in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.
- (1) Annuity savings fund. The annuity savings fund shall be a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner.
- (a) Each employer shall deduct from the compensation of each active member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to five per cent (5%) of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty (60) and rendered thirty-five (35) years of creditable service if such member elects not to contribute.
- (b) In determining the amount earnable by an active member in a payroll period, the retirement board may consider the rate of compensation

payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not an active member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one per cent (1%) of the annual compensation upon the basis of which said deduction is to be made.

- (c) Such deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member shall be deemed to consent and agree to the deductions prescribed by this section; and payment of salary or compensation less the deductions shall be a full and complete discharge of all claims whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by the retirement system.
- (d) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions plus interest in the amount the contributions would have earned had the contributions not been withdrawn, or any part thereof, which he had previously withdrawn; or any member may deposit therein by a single payment or by an increased rate of contribution amounts for the purchase of an additional annuity. Such additional amounts so deposited shall become a part of his accumulated contributions. In the case of disability retirement, they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his retirement allowance. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the pension accumulation fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.
- (2) Annuity reserve fund. The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.
- (3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Con-

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tributions to and payments from the pension accumulation fund shall be made as follows:

- (a) Each employer shall pay into the pension accumulation fund an amount equal to five and one-eighth per cent $(5\frac{1}{8}\%)$ of the earnable compensation of each member employed during the whole or part of the preceding payroll period.
- (b) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of section 75-7204.
- (c) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system or the Montana state deaf and blind school, the legislative assembly shall appropriate to each employer an adequate amount to allow the payment of the employer's contribution.
- (d) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under such budget.
- (e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, the annuity reserve fund and the pension reserve fund shall be transferred to the respective funds from the pension accumulation fund.
- (f) All pensions and benefits in lieu thereof, including pensions payable under section 75-6218, with the exception of those payable to members not entitled to prior service credit shall be paid from the pension accumulation fund.
- (g) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund or the pension reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.
- (h) Upon the retirement of a member who does not have a prior service certificate, the actuarial equivalent of his pension shall be transferred from the pension accumulation fund to the pension reserve fund.
- (4) Pension reserve fund. The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to prior service credit and from which shall be paid such pensions and benefits in lieu thereof. Should a member not entitled to prior service credit who has been retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension reserve held on account of his pension shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such a disability beneficiary be reduced as a result of an increase in his earning capacity the amount of annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

- (5) Expense fund. The expense fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year. Contributions shall be made to the expense fund as follows:
- (a) There shall be deducted from the compensation of each member by his employer the sum of one dollar (\$1) for each year, in addition to all other deductions herein prescribed. The sum of such administrative assessments shall be paid to the retirement board by each employer in the same manner provided for the payment of the employee contributions. The administrative assessments shall be credited to the expense fund by the retirement board.
- (b) That portion of the expense fund not financed under subsection (a) shall be paid from interest and other earnings realized on the moneys of the retirement system.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971.

Compiler's Note

Section 75-6207 was amended twice in 1971, once by Ch. 57, § 1 (approved February 20, 1971) and once by Ch. 422, § 1 (approved March 18, 1971). Neither section mentioned the other nor included the

changes made by the other. The compiler has made a composite section incorporating the changes made by both amendments. Ch. 57 inserted "plus interest... withdrawn" in subdivision (1)(d). Ch. 422 raised the percentage mentioned in subdivision (3)(a) from 5% to 51/8%.

Cross-Reference

Retirement fund, sec. 75-7204.

75-6208. Benefits. The retirement, disability and other benefits of the retirement system shall be granted on the basis of the following provisions:

- (1) Superannuation member retirement:
- (a) Any member who has completed five (5) years of creditable service, the last five (5) years of which shall have been in this state, and who has attained the age of sixty (60) may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.
- (b) Any member in service who has attained the age of seventy (70) years during any school year shall be retired on the first day of September following his seventieth birthday, except that this provision shall not apply to teachers in the Montana university system who may be employed beyond the age of seventy (70) upon the recommendation of the president of the employing unit to the board of regents. Members over seventy (70) years of age shall not: (1) be allowed creditable service for services rendered after the end of the school year in which the age of seventy (70) is attained, (2) contribute to the retirement system after the end of such school year, and (3) have the compensation received after the end of such school year used in computing average final salary. Initial employment of teachers in the Montana university system beyond the age of seventy (70) may be made upon the recommendation of the president of the

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ploying unit and the approval of the board of regents but such employees shall be denied membership in the retirement system.

- (c) Any retired member may be employed as a teacher in Montana and may earn an amount not to exceed one-fourth $(\frac{1}{4})$ of his average final compensation without loss of retirement benefits.
- (2) Allowance for superannuation retirement. Upon superannuation retirement a member shall receive a retirement allowance based upon the following provisions:
- (a) He shall receive an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement.
- (b) He also shall receive a pension of one-quarter $(\frac{1}{4})$ of his average final compensation provided his creditable service is at least thirty-five (35) years, otherwise, a pension of one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of his creditable service.
- (c) If he has a prior service certificate in full force and effect, he also shall receive an additional pension which shall be equal to one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.
- (d) The minimum annual retirement allowance for a member who has completed thirty (30) years service and who retired after September 1, 1937, and before June 30, 1948, shall be two thousand dollars (\$2,000) and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1948, but whose service is less than thirty (30) years shall receive a minimum retirement allowance based on the proportionate amount of two thousand dollars (\$2,000) that his service bears to thirty (30) years of service.
- (e) The minimum annual retirement allowance for a member who has completed thirty-five (35) years of service and who retires after June 30, 1949, shall be two thousand dollars (\$2,000).
- (f) Each member receiving a superannuation allowance on June 30, 1967, shall be entitled to an increase in his original retirement allowance of two per cent (2%) for each year he has been retired between July 1, 1937, and June 30, 1967, but if he is eligible under subsections (2) (d) or (2) (e) above and the benefit thereunder is larger than the increased retirement allowance prescribed herein, this provision shall not apply.
- (g) In the event a member retired on a superannuation allowance has not received more than three (3) retirement payments prior to death the beneficiary of the member shall receive a refund of the difference between the total retirement allowance paid and the amount of accumulated contributions.
- (h) Every beneficiary receiving a superannuation allowance on June 30, 1969, shall be entitled to an increase in his superannuation allowance of five per cent (5%) beginning July 1, 1971, but if he is eligible under subsections (2) (d) or (2) (e) above and the benefit thereunder is larger than the increased retirement allowance prescribed herein, this provision shall not apply.

- (3) Disability member retirement:
- (a) Upon the application of an active member or of his employer, any active member who has five (5) or more years of creditable service may be retired by the retirement board not less than thirty (30) and not more than ninety (90) days after the date of filing such application on a disability retirement allowance. Before any member shall be eligible for a disability retirement, the medical board of the retirement system shall certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent and that he should be retired.
- (b) If the applicant for disability retirement was prevented because of the disability from making application at the time of the commencement of his disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of his disability.
- (c) Re-examination of beneficiaries retired on account of disability. Once each year during the first five (5) years following the retirement of a member on disability retirement allowance, and once in every three (3) year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty (60) to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty (60) refuse to submit to at least one (1) medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his disability pension may be revoked by the retirement board.
- (d) Should the medical board report and certify to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be changed later, the amount of his pension may be further modified but the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.
- (e) Should a disability beneficiary under age sixty (60) be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, and he shall again become an

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active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force and effect an addition upon his subsequent retirement, he shall be credited with all his subsequent service as a member. Should he be restored to active service on or after the attainment of the age of fifty-five (55) years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

- (4) Allowance for disability retirement. Upon retirement for disability, a member shall receive a superannuation allowance prescribed under subsection (2) above if he is eligible; otherwise he shall receive a disability retirement allowance which shall consist of:
- (a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement.
- (b) A pension which together with his annuity, shall provide a total retirement allowance equal to ninety per cent (90%) of one-seventieth (1/70) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter $(\frac{1}{4})$ of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter $(\frac{1}{4})$ of his average final compensation, provided, however, that no such allowance shall exceed ninety per cent (90%) of one-seventieth (1/70) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.
- (c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death, the difference between the total retirement allowance paid and the amount of the accumulated contributions of the member shall be paid to the beneficiary.
- (5) Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates shall withdraw his accumulated contributions to his annuity account in the retirement system in accordance with the following provisions:
- (a) An inactive member under the provisions of subsections (1) or (3) of section 75-6210 may elect, without right of revocation to withdraw his accumulated contributions, and if he does not withdraw his accumulated contributions he shall thereafter remain an inactive member of the retirement system with the right to qualify for the benefits of the retirement system;
- (b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of subsection (2) of section 75-6210 shall withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of subsection (4) of section 75-6211 shall withdraw his accumulated contributions.

Any person withdrawing his accumulated contributions shall be paid the amount he contributed, less any unpaid membership fees. The accumulated interest credited to his annuity account shall be transferred to the pension accumulation fund.

- (6) Allowances for death of member.
- (a) Should a member die before retirement the amount of the member's accumulated contributions shall be paid to his estate or such person as he may have designated in the manner prescribed by the retirement board which shall be filed with the board prior to the member's death.
- (b) In lieu of benefits provided in (a) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be based on the beneficiary's attained age at the time of the deceased member's death and calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.
- (c) If the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, the sum of fifty dollars (\$50) per month shall be paid to each minor child of the deceased member until such child reaches his eighteenth (18th) birthday.
- (7) Optional allowances. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided, or he may on retirement elect to receive the actuarial equivalent at that time of his retirement or disability allowance in a lesser retirement allowance payable throughout life with the provision that:
- (a) Option 1. If he dies before he has received in payment of his annuity the amount of his accumulated contributions as they were at the time of his retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board; or
- (b) Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or
- (c) Option 3. Upon his death, one-half $(\frac{1}{2})$ of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

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(d) Option 4. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement, except such other benefit or benefits, together with the lesser retirement allowance shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971.

Compiler's Notes

Section 75-6208 was amended twice in 1971, once by Ch. 57, § 2 (approved February 20, 1971) and once by Ch. 422, § 2 (approved March 18, 1971). Subdivisions (2)(d) to (h) are shown as amended by Ch. 422; the provisions of Ch. 57, although appearing in a different order, covered the same subject matter except for subdivisions (2)(d) and (e) which read:

"(d) Or, upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of a pension which, together with an annuity, shall provide a retirement allowance equal to one-half (½) of his average final compensation provided his creditable service is at least thirty-five (35) years, otherwise a pension together with his annuity of one-seventieth (1/70) of his average final compensation multiplied by the number of years of creditable service.

"(e) Or, upon superannuation retirement, a member shall receive a superannuation retirement allowance which shall consist of an annuity equal to the actuarial equivalent of his contributions at the time of his retirement and a pension equal to the actuarial equivalent of his contributions at the time of his retirement."

Subdivision (4)(b) appears as amended by Ch. 422; that amendment inserted "ninety per cent (90%) of" before "one-seventieth" near the beginning of the subdivision and added the proviso at the end of the subdivision.

Constitutionality

Provisions of 1945 amendment to former subsection providing that withdrawing member should be paid only amount contributed were unconstitutional as impairing teachers' contractual rights where they deprived withdrawing member of interest to which she would have been entitled under law prior to amendment. Clarke v. Ireland, 122 M 191, 199 P 2d 965, 970.

Compulsory Retirement

Motion and rules and regulations adopted by school trustees requiring the retirement of all teachers upon arriving at the age of sixty-five years were void. Abshire v. School District No. 1, 124 M 244, 220 P 2d 1058.

- 75-6209. Active membership. Any of the following persons shall be active members of the retirement system unless otherwise provided by this Title, except for those persons who became eligible for membership on the first day of September, nineteen hundred and thirty-seven (1937) or on the first day of September, nineteen hundred and thirty-nine (1939) and who elected not to be a member under the provisions of the law at that time:
- Any person who is a teacher, principal or district superintendent as defined under the provisions of section 75-6101.
- Any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system.
- (3) Any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a public institution of the state of Montana, the Montana state deaf and blind school, or a district.
- Any person who shall have elected not to become a member of the retirement system and is re-entering service in a capacity prescribed by subsections (1), (2) and (3) above.

(5) Any person who shall have elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1), (2) or (3) above since the time of such election and who may thereafter elect to become a member of the retirement system.

Any person who is designated a member by this section shall be employed full time, outside of vacation periods, in the capacity prescribed for his eligibility; except that when a person is employed less than full time, the retirement board may allow such person to become a member of the retirement system. The compensation for the creditable service of any person who is designated a member by this section shall be totally paid by an employer as defined herein, except that when this requirement is not satisfied, the retirement board may allow such a person to become a member of the retirement system. At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971.

Cross-Reference

Community college trustees and teachers eligible, sec. 75-8120.

75-6210. Inactive membership. Any person's active membership in the retirement system shall terminate, but he shall be an inactive member when:

- (1) he ceases to be employed in a capacity that allows his membership and he has five (5) or more years of creditable service in the retirement system;
- (2) he ceases to be employed in a capacity that allows his membership and he has less than five (5) years of creditable service in the retirement system, but his loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States which includes the army, navy, marine corps, air force and coast guard, or by service in the American Red Cross or merchant marine during time of war; or
- (3) he has five (5) or more years creditable service and he becomes a member of any other retirement or pension system supported wholly or in part by moneys of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, no person shall be excluded from active membership solely because he is receiving or is eligible to receive retirement benefits from another retirement system.

History: En. 75-6210 by Sec. 105, Ch. 5, L. 1971.

Cross-References

Community college trustees and teachers eligible, sec. 75-8120.
Supplemental Social Security coverage

for teachers, secs. 59-1109 et seq.

75-6211. Membership termination. The active or inactive membership in the retirement system of any person shall terminate when:

- (1) he retires on a retirement allowance of the retirement system;
- (2) he dies;
- (3) he withdraws his accumulated contribution to the retirement system under the provisions of subsection (5) of section 75-6208; or
- (4) he ceases to be employed in a capacity that allows his membership, he has less than five (5) years of creditable service in the retirement system, and he cannot qualify under the provisions of subsection (2) of section 75-6210.

History: En. 75-6211 by Sec. 106, Ch. 5, L. 1971.

75-6212. Membership application and creditable service. Whenever a person becomes eligible for membership in the retirement system, he shall apply for such membership on the application form prescribed by the retirement board. The creditable service of a member shall begin on the receipt of the membership application by the retirement board and shall accumulate to the member's credit on the basis of the retirement board's policy governing creditable service.

The creditable service of any member shall include the following:

- (1) each year of service of a member for which contributions to the retirement system were deducted from his compensation under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939, this act, and their subsequent amendments, except that no credit shall be awarded for those years of service for which the contributions have been withdrawn and not replaced; plus
- (2) any out-of-state employment service awarded by the retirement board under the provisions of section 75-6213; plus
- (3) any service awarded by a prior service certificate issued under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939 and their subsequent amendments, or under the provisions of section 75-6213.

The creditable service established by the retirement board under the provisions of this section shall be final and conclusive for the purposes of the retirement system unless, at any time, the retirement board discovers an error or fraud in the establishment of the creditable service, in which case the retirement board shall re-establish the creditable service.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971.

sections (1) and (3), were repealed by Sec. 496, Ch. 5, Laws 1971.

Compiler's Note

Chapter 87, Laws of 1937 and chapter 215, Laws of 1939, referred to in sub-

Collateral References

Services included in computing period of service for purpose of teachers' retirement benefits. 2 ALR 2d 1033.

75-6213. Creditable service for out-of-state employment and before September, 1937. Any person applying for membership also may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this Title if such service were performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing

five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than five (5) years, if he contributes to the retirement system an amount equal to five per cent (5%) of his first year's salary earned in Montana for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. The contributions may be a lump-sum payment or in installments as agreed between the person and the retirement board.

Whenever a member is retiring with at least ten (10) years of creditable service and he has been an active member for at least five (5) consecutive school fiscal years, he may request creditable service for any employment service he rendered prior to the first day of September, nineteen hundred and thirty-seven (1937) for which he has not received a prior service certificate. In order to receive such creditable service, he shall apply for it and provide certification of such service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971.

75-6214. Duties of employer. It shall be the duty of each employer to:

- (1) deduct the contribution of each member employed by him at the rate prescribed by subsection (1) of section 75-6207 from each salary payment for each payroll period, and transmit the contribution each month to the secretary of the retirement board;
- (2) pay to the secretary of the retirement board the employer's contribution prescribed by subsection (3) of section 75-6207 at the time that the employee contributions are transmitted to the secretary of the retirement board;
- (3) keep records and, as required by the retirement board, furnish information to the retirement board that is required in the discharge of the retirement board's duties;
- (4) upon the employment of any person who is required to become a member of the retirement system, inform him of his rights and obligations related to the retirement system. Each person accepting such employment shall be deemed to consent to membership and to the withholding of the contributions from his compensation;
- (5) at the request of the retirement board, certify the names of all persons who are eligible for membership or are members of the retirement board; and
- (6) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the retirement board.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971.

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75-6215. Exemption from taxation, execution and assignment. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are hereby exempted from any state, county or municipal tax of the state of Montana, and shall not be subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process whatsoever and shall be unassignable except as specifically provided.

History: En. 75-6215 by Sec. 110, Ch. 5, L. 1971.

75-6216. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves in the annuity reserve fund and of pension reserves in the pension reserve fund as provided for in this Title and the payment of all annuities, pensions, refunds, and other benefits granted under the retirement system are hereby made obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971.

75-6217. Protection against fraud. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor and shall be punishable therefor under the laws of the state of Montana. Should any change or error in records result in any member or beneficiary receiving from the retirement [system] more or less than he would have been entitled to receive had the records been correct, then on discovery of any such error, the retirement board shall correct such error, and as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971.

Compiler's Note

The compiler has inserted the bracketed word "system."

75-6218. Discontinuance of former retirement system. On and after the first day of September, 1937, no further retirements shall be made under the provisions of the law governing the former retirement system and no benefits shall be paid either from the public school teachers' retirement salary fund, or from the public school teachers' permanent fund as established under such law, except as herein described.

All assets held in the funds maintained under said law on the first day of September, 1937, shall be transferred to the pension accumulation fund of the retirement system to be held in trust and invested as a trust fund and disbursed only in payment of benefits to those teachers on whose account they were contributed. The retirement salaries of all persons entitled to retirement salaries from the former retirement system on September 1, 1937, shall be paid beginning as of September 1, 1937, from such trust fund.

Any person who, having retired upon a retirement allowance under the former retirement system, shall have retired after having served as a teacher for at least twenty-five (25) school years, fifteen (15) of which, including the last ten (10) years, shall have been in the schools of this state, and who shall elect under this section to receive his interest in said public school teachers' retirement salary fund and said public school teachers' permanent fund in the form of an annuity, shall be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance which, together with his said annuity, shall equal the sum of nine hundred dollars (\$900). Any other person retired upon such allowance who shall elect to receive his interest in said funds in the form of an annuity shall, upon reaching the age of sixty (60) years, be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance, which together with his said annuity shall equal a sum which shall be that proportion of nine hundred dollars (\$900) which the number of school years which he shall have served as a teacher, and credited under the former retirement system bears to twenty-five (25).

History: En. 75-6218 by Sec. 113, Ch. 5, L. 1971,

CHAPTER 63

COMPULSORY ATTENDANCE AND TUITION AGREEMENTS

Section 75-6301. Definition. 75-6302. Admittance of child to school. 75-6303. Compulsory enrollment and excuses. 75-6304. Compulsory attendance and excuses. 75-6305. Attendance officer. 75-6306. Attendance officer powers and duties. 75-6307. Truancy. 75-6308. Incapacitated and indigent child attendance. 75-6309. Tribal agreement with district for Indian child compulsory attendance and other agreements. 75-6310. Duties and sanctions. 75-6311. Suspension and expulsion. 75-6312. Secret organization prohibited.
75-6313. Elementary tuition with mandatory approval.
75-6314. Elementary tuition with discretionary approval.
75-6315. Distances, notification and appeal for elementary tuition. Elementary tuition with discretionary approval. Distances, notification and appeal for elementary tuition purposes. 75-6317. Reporting, budgeting and payment for high school tuition. 75-6318. Reciprocal tuition agreement with adjoining state. 75-6319. 75-6320. High school tuition for public institution at Twin Bridges. Individual tuition for elementary pupil. Individual tuition for high school pupil. 75-6321. 75-6322. 75-6323. Extracurricular fund for pupil functions.

75-6301. Definition. As used in this Title, unless the context clearly indicates otherwise, "pupil" means any child who is six (6) years of age or older but has not yet reached his twenty-first birthday and who is en-

rolled in a school established and maintained under the laws of the state of Montana at public expense.

History: En. 75-6301 by Sec. 114, Ch. 5, L. 1971.

75-6302. Admittance of child to school. The trustees shall assign and admit any child to a school in the district, when the child is:

- (1) six (6) years of age or older but has not yet reached his twentyfirst birthday:
 - (2) a resident of the district; and
- otherwise qualified under the provisions of this Title to be admitted to such school.

In complying with subsection (1) above, the trustees shall have the authority to establish reasonable age requirements for entry into the first grade so long as an otherwise qualified child is permitted to enter the first grade sometime during his seventh year or earlier.

The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this Title.

History: En. 75-6302 by Sec. 115, Ch. 5, L. 1971.

Cross-References

Confidential relationship between student and school personnel, sec. 93-701-4. General rules for determining residence,

sec. 83-303.

Public free schools open to children between six and twenty-one years, Const., Art. XI, sec. 7.

Religious or partisan test or qualification prohibited, Const., Art. XI, sec. 9.

Smallpox vaccination, sec. 69-4515.

Age of Admission to School

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children be-tween the ages of six and twenty-one years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet six years of age and each school district may establish a "cutoff" date governing entry into the first grade. State ex rel. Ronish v. School District No. 1, 136 M 453, 348 P 2d 797.

Collateral References

Schools and School Districts 152, 153. 79 C.J.S. Schools and School Districts §§ 448, 449.

47 Am. Jur. 406, 407, Schools, §§ 151,

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 72 ALR 499 and 113 ALR 177.

Age: power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority. 78 ALR 2d 1021.

Residence for purpose of admission to public school. 83 ALR 2d 497.

75-6303. Compulsory enrollment and excuses. Any parent, guardian or other person who is responsible for the care of any child who is seven (7) years of age or older prior to the first day of school in any school fiscal year and has not yet reached his sixteenth birthday, or of a child who has not completed the work of the eighth (8th) grade, shall cause the child to be instructed in the English language and in the subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable. Such parent, guardian or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless:

- (1) the child is enrolled in a private institution which provides instruction in the subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable, and in which the basic language taught is English;
- (2) the child is enrolled in a school of another district or state under any of the tuition provisions of this Title;
- (3) the child is provided with supervised correspondence study or supervised home study under the transportation provisions of this Title; or
- (4) the child is excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this Title.

The excuse provided for in subsection (4), above, shall be issued by the district superintendent, or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within ten (10) days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final.

(5) the child is excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child.

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971.

75-6304. Compulsory attendance and excuses. Any parent, guardian or other person who is responsible for the care of any child who is seven (7) years of age or older prior to the first day of school in any school fiscal year but has not yet reached his sixteenth birthday, or of a child who has not-completed the work of the eighth grade, shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district unless:

(1) the child has been excused under one of the conditions specified

in section 75-6303;

(2) the child is absent because of illness, bereavement or other reason prescribed by the policies of the trustees; or

(3) the child has been suspended or expelled under the provisions of section 75-6311.

History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 160.
79 C.J.S. Schools and School Districts 463-470.

47 Am. Jur. 412-415, Schools, §§ 156-159.

Extent of legislative power with respect to attendance and curriculum in schools. 39 ALR 477 and 53 ALR 832.

Releasing public school pupils from attendance for purposes of attending reli-

gious education classes. 2 ALR 2d 1371.
Religious beliefs of parents as defense
to prosecution for failure to comply with
compulsory education law. 3 ALR 2d 1401.

What constitutes "private school" within statute making attendance at such a school compliance with compulsory school attendance law. 14 ALR 2d 1369.

Applicability of compulsory attendance law covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR 23 874

- 75-6305. Attendance officer. In order to enforce the compulsory attendance provisions of this Title, each district shall have at least one person serving as an attendance officer according to the following requirements:
- (1) districts of the first and second class shall employ and appoint one or more attendance officers;
- (2) districts of the third class may employ and appoint an attendance officer, or may appoint a constable or other peace officer as an attendance officer; or
- (3) the county superintendent shall be the attendance officer in thirdclass districts that do not appoint an attendance officer.

History: En. 75-6305 by Sec. 118, Ch. 5, L. 1971.

79 C.J.S. Schools and School Districts § 473.

Collateral References

Schools and School Districts 2161.

Truant or attendance officer's liability for assault and battery or false imprisonment, 62 ALR 2d 1328.

75-6306. Attendance officer powers and duties. The attendance officer of any district shall:

- (1) be vested with police powers, the authority to serve warrants and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this Title;
- (2) take into custody any child subject to compulsory attendance who is not excused under the provisions of this Title and conduct him to the school in which he is or should be enrolled;
- (3) do whatever else is required to investigate and enforce the compulsory attendance provisions of this Title and the pupil attendance policies of the trustees;
- (4) institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this Title;
- (5) keep a record of his transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and
- (6) perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: En. 75-6306 by Sec. 119, Ch. 5, L. 1971.

Collateral References

Truant or attendance officer's liability for assault and battery or false imprisonment. 62 ALR 2d 1328.

75-6307. Truancy. Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this Title, he shall notify in writing the parent, guardian or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within two

days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction. If convicted, such person shall be fined not less than five (\$5) nor more than twenty dollars (\$20). In the alternative, he may be required to give bond in the penal sum of one hundred dollars (\$100), with sureties, conditioned upon his agreement to cause the enrollment of his child within two (2) days thereafter in a school providing the courses of instruction required by this Title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than ten (10) days or more than thirty (30) days.

History: En. 75-6307 by Sec. 120, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 161, 173. 79 C.J.S. Schools and School Districts \$\ 471, 501.

75-6308. Incapacitated and indigent child attendance. In lieu of the provisions of section 75-6307 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because he does not have the physical capacity or he is absolutely required to work at home or elsewhere in order to support himself or his family, the attendance officer shall report the case to the authorities charged with the relief of the poor. It shall be the duty of such welfare authorities to offer such relief as will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child shall be committed to a state institution, at the discretion of the court.

History: En. 75-6308 by Sec. 121, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 161. 79 C.J.S. Schools and School Districts 471, 474.

75-6309. Tribal agreement with district for Indian child compulsory attendance and other agreements. It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district, unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this Title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

The trustees of any district shall have the authority to enter into an agreement with the tribal council or other governing body of an Indian tribe or Indian reservation to perform any other functions prescribed by

this Title except as limited by the laws of the United States and its treaties with such Indian tribe.

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History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971.

75-6310. Duties and sanctions. Any pupil shall:

- (1) comply with the policies of the trustees and the rules and regulations of the school which he attends;
 - pursue the required course of instruction;
- (3) submit to the authority of the teachers, principal and district superintendent of the district; and
- be subject to the control and authority of the teachers, principal and district superintendent while he is in school or on school premises, on his way to and from school, or during his intermission or recess.

Any pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district or harms or threatens to harm another person or his property shall be liable for punishment, suspension or expulsion under the provisions of this Title. When a pupil defaces or damages school property, as defined above, his parent or guardian shall be liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent or any trustee and the proof of such damage.

In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. Such action shall not be taken until the incident or infraction causing such consideration has been investigated and the trustees have determined that the high school pupil was involved in such incident or infraction.

History: En. 75-6310 by Sec. 123, Ch. 5, L. 1971.

Cross-References

Disturbance of school, sec. 75-8306, 94-

Power of teacher over pupils and undue punishment, sec. 75-6109.

Collateral References

Schools and School Districts 169 et

79 C.J.S. Schools and School Districts § 493 et seq.

47 Am. Jur. 426 et seq., Schools, § 173

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Right to discipline pupil for conduct away from school grounds. 41 ALR 1312. Power of legislature or school authori-

ties to prescribe and enforce oath of allegiance, salute to flag, or other ritual of a patriotic character. 147 ALR 698. Teacher's civil liability for administer-

ing corporal punishment to pupil. 43 ALR 2d 469.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 ALR 3d 996.

Clothes of pupils, validity of regulation by school authorities. 14 ALR 3d 1201.

Demonstrations: participation of stu-dent in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 ALR 3d 864.

75-6311. Suspension and expulsion. As provided in sections 75-6109 and 75-6113, any pupil may be suspended by a teacher, superintendent or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent or principal in suspending a pupil and to define the circumstances and procedures by which the trustees may expel a pupil. Expulsion shall be a disciplinary action available only to the trustees.

History: En. 75-6311 by Sec. 124, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 177.
79 C.J.S. Schools and School Districts 503.

47 Am. Jur. 429 et seq., Schools, § 177 et seq.

Personal liability of school authorities for dismissal or suspension of pupil. 42 ALR 763.

Hearing on charges before suspension or expulsion from educational institution. 58 ALR 2d 903.

75-6312. Secret organization prohibited. It shall be unlawful for any pupil to participate in or be a member of any secret fraternity or other secret organization that is in any degree a school organization. It also shall be unlawful for any pupil or other person to solicit any pupil to join any such prohibited secret fraternity or other secret organization. Any person violating the provisions of this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than five dollars (\$5) or more than twenty-five dollars (\$25) for each violation.

History: En. 75-6312 by Sec. 125, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$\sim 169, 171, 173.

79 C.J.S Schools and School Districts §§ 493, 499, 503, 512.
47 Am. Jur. 423, Schools, § 169.

Regulations as to school or college fraternities. 10 ALR 3d 389.

75-6313. Elementary tuition with mandatory approval. Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located: (1) in any other district of the county of his residence, (2) in a county adjoining his county of residence, or (3) in a district of another state that is adjacent to the county of his residence. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before the first day of July of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved by (1) the trustees of the elementary district in which the child resides, (2) the trustees of the district where the child wishes to attend school, and (3) the county superintendent of the child's residence before permission to enroll in and attend a school outside of the district under the provisions of this section shall be granted.

In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

- (1) the child resides less than three (3) miles from the school which he wishes to attend and more than three (3) miles from any school of his resident elementary district;
- (2) the child resides more than three (3) miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this Title;
- (3) the child resides more than three (3) miles from any school of his resident elementary district and the resident district does not provide transportation under the provisions of this Title, and school bus transportation is furnished by the district operating the school which he wishes to attend;
- (4) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located provided such child resides more than three (3) miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school; or
- (5) the child has been declared by a district court a dependent and neglected child, as defined in section 10-501, R. C. M., 1947, or a juvenile delinquent child, as defined in section 10-602, R. C. M., 1947, and such child has been ordered to be placed in a duly licensed child care institution which is also approved by the state department of public welfare, and as a result of the order the child is required to attend elementary school outside of the district of his residence. For purposes of this subsection the prescribed geographic relationship of the receiving district to the district of residence shall not apply.

The trustees of the district where the school to be attended is located shall have the authority to disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsections (1), (2), (3), (4) or (5) above when they shall find that due to insufficient room and overcrowding the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within fifteen (15) days of the first receipt of the application.

History: En. 75-6313 by Sec. 126, Ch. 5, L. 1971.

Cross-Reference

Tuition rates, sec. 75-7201.

Collateral References

Schools and School Districts 2154.

79 C.J.S. Schools and School Districts 3 450.

47 Am. Jur. 409, Schools, § 154.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 72 ALR 499 and 113 ALR 177.

75-6314. Elementary tuition with discretionary approval. In considering the approval of a tuition application that is not required to be approved under the provisions of section 75-6313, the tuition approval agents prescribed in section 75-6313 may approve such application when such approval agents, individually, determine that the tuition agreement should be approved because of:

- (1) the distance and road conditions between the child's residence and any school of his resident district;
 - (2) the trading center of the child's parents;
 - (3) an opportunity to live with his relatives;
 - (4) dormitory facilities in the district to be attended;
 - (5) the living conditions of the child's family;
 - (6) the availability of transportation; or
- (7) the type of educational program available in the school to be attended.

History: En. 75-6314 by Sec. 127, Ch. 5, L. 1971.

Capacity of Trustees

In exercise of power to admit nonresident pupils and fix the amount of tuition

to be charged them, board of trustees acts in a quasijudicial capacity, and courts will not interfere with the proper exercise of its discretion and judgment in that regard. Peterson v. School Board of School Dist. No. 1, 73 M 442, 445, 236 P 670.

75-6315. Distances, notification and appeal for elementary tuition purposes. In considering any approval of an application submitted under the provisions of section 75-6313 or section 75-6314, the approval agents shall determine mileage distances on the basis of the shortest practical route between the child's residence and the school building, and they shall determine the child's residence on the basis of the provisions of section 83-303, R. C. M., 1947.

The county superintendent shall notify the parent or guardian and the trustees of the districts involved in the tuition application, of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by any approval agent, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this Title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

The rate of tuition and the budgeting and payment procedure prescribed in section 75-7201 shall be applicable to any tuition application approved under the provisions of this section.

History: En. 75-6315 by Sec. 128, Ch. 5, L. 1971.

Constitutionality

Laws 1927, ch. 77, sec. 2 providing for appeal to state board of education in matters of transportation, rent, tuition or board was not open to the objection that under section 11, Article XI of the Constitution, the legislature was limited to

prescribing powers and duties for board to be exercised in connection with the state educational institutions and therefore was without authority to clothe it with jurisdiction to pass on appeals relating to matters connected with the common schools; section was not ineffective for failure to provide procedure rules for taking the appeal. State ex rel. Stephens v. Keaster, 82 M 126, 129, 266 P 387.

75-6316. High school tuition. Any child may be enrolled in and attend a high school outside of the county in which he resides when such high school is located in any county of the state of Montana or in a county of another state that is adjacent to the state of Montana. When a parent or

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guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before the first day of July of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved by the trustees of the district where the child wishes to attend school and the county superintendent of the child's county of residence before permission to enroll in and attend a school outside of the county under the provisions of this section shall be granted.

The county superintendent shall approve a tuition application when a child lives closer to a high school of another county than any high school located within his resident county or, when due to road or geographic conditions, it is impractical to attend a high school in his resident county. In approving a tuition agreement under this provision, the county superintendent may require the child to attend the high school closest to his residence. The county superintendent may approve any other tuition application that satisfies the geographic requirements of this section.

The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within fifteen (15) days after the receipt of the application.

The county superintendent shall notify the parent or guardian, and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by the county superintendent, the parent may appeal such disapproval to the county superintendent for his reconsideration and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this Title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 154.
79 C.J.S. Schools and School Districts 450.
47 Am. Jur. 409, Schools, \$ 154.

75-6317. Reporting, budgeting and payment for high school tuition. At the close of the school term of each school fiscal year and before the fifteenth day of July, the trustees of each high school district shall report to the county superintendent of the county in which the district is located:

- (1) the names, addresses, and resident counties of the pupils attending the schools of the district under an approved tuition agreement;
 - (2) the number of days of school attended by each pupil; and
- (3) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive.

When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside.

When the county superintendent of any county receives a tuition report or reports for high school pupils residing in his county and attending an out-of-county high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-county high schools on the basis of the following per pupil schedule: (1) three hundred dollars (\$300) per pupil when the ANB of the attended school is one hundred (100) or less;

- (2) two hundred seventy-five dollars (\$275) per pupil when the ANB of the attended school is more than one hundred (100) but less than three hundred one (301); or
- (3) two hundred fifty dollars (\$250) per pupil when the ANB of the attended school is three hundred one (301) or more.

The total amount of the high school tuition determined under the rate schedule, and in consideration of any tuition waivers, shall be financed by the county basic special tax for high schools as provided in section 75-6914.

In December, the county superintendent shall cause the payment by county warrant of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The payment shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of section 75-6926.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971.

75-6318. Reciprocal tuition agreement with adjoining state. The superintendent of public instruction shall have the authority to execute a reciprocal tuition agreement with the superintendent of public instruction or a department of education of any state adjoining Montana to allow the eligible children of Montana to attend school in the adjoining state and to allow children of the adjoining state to attend school in Montana. In negotiating a reciprocal tuition agreement, the tuition rates prescribed by section 75-7201 and section 75-6317 shall be waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal tuition agreement that is executed to the county superintendent of each county that may be affected by such agreement.

Any tuition agreement approved under the provisions of sections 75-6313, 75-6314 or 75-6316 for a child's attendance at a school outside of the state shall be completed in accordance with the applicable reciprocal tuition agreement.

History: En. 75-6318 by Sec. 131, Ch. 5, L. 1971.

75-6319. High school tuition for public institution at Twin Bridges. Whenever high school pupils are inmates of the Montana children's center

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at Twin Bridges and attend high school in Twin Bridges, the superintendent of public instruction shall pay five hundred dollars (\$500) per pupil for each pupil who has attended forty (40) or more days of school in such district. The annual payment shall be made from the state equalization aid account to the county treasurer for the credit of the Twin Bridges high school general fund immediately after the end of the school fiscal year of attendance and after the verification of the claim submitted by Twin Bridges high school district. An approved tuition agreement shall not be required under this section.

History: En. 75-6319 by Sec. 132, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1971.

Cross-Reference

Montana children's Center at Twin Bridges, sec. 80-2101 et seq.

75-6320. Individual tuition for elementary pupil. No provision of this Title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by section 75-7201 reduced by any amount which is uniformly waived by the trustees for all tuition payments. However, under this section, tuition shall be waived when the parent of the child paid two hundred dollars (\$200) or more in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

History: En. 75-6320 by Sec. 133, Ch. 5, L. 1971.

75-6321. Individual tuition for high school pupil. Any child eligible to attend high school may attend school in any high school district of his county of residence without payment of tuition.

No provision of this Title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his county of residence when the parent agreed to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees.

History: En. 75-6321 by Sec. 134, Ch. 5, L. 1971.

75-6322. Fees. The trustees of any district may require pupils in the commercial, industrial arts, music, domestic science, scientific or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used.

History: En. 75-6322 by Sec. 135, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 5271. 79 C.J.S. Schools and School Districts 456.

75-6323. Extracurricular fund for pupil functions. The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

An accounting system for the extracurricular fund recommended by the state examiner shall be implemented by the trustees. Such accounting system shall provide for:

- (1) the internal control of the cash receipts and expenditures of the money; and
- (2) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

The trustees of the district shall cause an annual audit of the extracurricular fund by retaining a qualified accountant or the state examiner to perform such audit. Whichever person the trustees wish to retain, they shall notify the state examiner of their decision by the first day of January of the school fiscal year to be audited. If the state examiner performs the audit, a fee of eighty dollars (\$80) per day per man shall be paid from the extracurricular fund or district moneys to the state examiner for deposit in the state treasury to the credit of the general fund.

The auditor shall file a certified copy of the audit report with the county superintendent. The county superintendent shall publish notice in a newspaper of the district or county of the filing and the fact that it is open to public inspection.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971.

CHAPTER 64

SCHOOL ELECTIONS

Section 75-6401. Definition. 75-6402. Precedence of scho 75-6403. Election by ballot. Precedence of school election provisions. 75-6404. Regular school election day and special school elections. 75-6405. Poll hours. 75-6406. Conditions under which school election called. 75-6407. Time limitation for conduct of election. 75-6408. Resolution for poll hours, polling places, ju Resolution for poll hours, polling places, judges, and ballot format. 75-6409. Election notice. 75-6410. Qualifications of elector. 75-6410.1. Legislative policy and purpose. 75-6411. Repealed. 75-6412. Elector challenges. 75-6413. Closure of registration. 75-6414. Listing of registered electors. 75-6415. Delivery of and charge for lists of registered electors. 75-6416. Absentee voting.
75-6417. Voting machines and electronic voting systems.
75-6418. General supervision and supplies.

75-6419. Clerk of election judges and appointment for absent judge.

75-6420. Election expenses. 75-6421. Conduct of election.

75-6422. Delivery of ballot, pollbook, tally sheet, and certifying election result.

75-6423. Trustees canvass of votes and issuance of election certificate.

75-6401. Definition. As used in this Title, unless the context clearly indicates otherwise: "school election" means any election conducted by a district or community college district for the purpose of electing trustees, for authorizing taxation, for authorizing the issuance of bonds by an elementary district or a high school district, or for accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this Title.

History: En. 75-6401 by Sec. 137, Ch. 5, L. 1971.

Election frauds and offenses, sec. 94-1401 et seq.

Elections generally, sec. 23-2601 et seq. Trustees' election, sec. 75-5906 et seq.

Cross-References

Consolidation or annexation election with assumption of bonded indebtedness, sec. 75-6509.

75-6402. Precedence of school election provisions. Unless specifically identified in any section of the election laws prescribed in Title 23, R. C. M., 1947, school elections shall be governed by the provisions of this Title. Should there be a conflict between the requirements of Title 23 and the provisions of this Title regulating school elections, the provisions of this Title shall govern.

History: En. 75-6402 by Sec. 138, Ch. 5, L. 1971.

75-6403. Election by ballot. All school elections shall be by ballot.

History: En. 75-6403 by Sec. 139, Ch. 5, L. 1971.

Collateral References

Elections \$\infty\$161.
29 C.J.S. Elections \ 154.
26 Am. Jur. 2d 36, Elections, \ 203.

75-6404. Regular school election day and special school elections. The first Saturday of April of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees.

History: En. 75-6404 by Sec. 140, Ch. 5, L. 1971.

Collateral References

Elections 38.
29 C.J.S. Elections 77.
26 Am. Jur. 2d 57, Elections, 226.

Cross-Reference

Separate elections, Const., Art. \overline{XI} , sec. 10.

75-6405. Poll hours. The polls for any school election in any district shall open not later than 12 noon. The trustees may order the polls to open earlier, but no earlier than 8 a.m. However, the polls shall open at 8 a.m. if the school election is held on the same day, at the same polling places and with the same judges and clerks as a general, primary, county or city election.

Once opened, the polls shall be kept open continuously until 8 p.m. except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately.

History: En. 75-6405 by Sec. 141, Ch. 5, L. 1971.

Collateral References
Elections©⇒206-208.
29 C.J.S. Elections § 198.
26 Am. Jur. 2d 60, Elections, § 227.

75-6406. Conditions under which school election called. At least thirty-five (35) days before any school election, the trustees of any district shall call such school election by resolution, stating the date and purpose of such election, and conduct it in accordance with the procedures required by law, when:

- (1) an election must be held on the regular school election day;
- (2) in their discretion, such trustees order an election for a purpose authorized by law;
- (3) the county superintendent orders an election in accordance with the law authorizing such an order;
- (4) the board of education orders an election in accordance with the law authorizing such an order;
- (5) the county commissioners order an election in accordance with the law authorizing such an order:
- (6) the board of trustees of a community college district orders an election in accordance with the law authorizing such an order, in which case the community college district shall bear its share of the cost of such election; or
 - (7) a school election is required by law under any other circumstances.

The resolution calling any school election shall be transmitted immediately to the county registrar in order to enable him to close the registration and prepare the lists of registered electors as required by school election laws.

History: En. 75-6406 by Sec. 142, Ch. 5, L. 1971.

Petitions To Rescind Valid Bond Elections

There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the ques-

tion already favorably voted upon, especially where no fraud is either alleged or shown in the conduct of the election already held. Schmiedeskamp v. Board of Trustees of School District No. 24, 128 M 493, 278 P 2d 584, 586, 68 ALR 2d 1035.

Collateral References

Elections 30, 34.
29 C.J.S. Elections §§ 67, 70.
26 Am. Jur. 2d 15, Elections, § 185.

75-6407. Time limitation for conduct of election. Whenever the trustees of any district receive an order to call an election, they shall conduct such election any time within sixty (60) days after the date of the order unless the law or order otherwise regulates the day or timing of such election.

History: En. 75-6407 by Sec. 143, Ch. 5, L. 1971.

75-6408. Resolution for poll hours, polling places, judges, and ballot format. At the trustee meeting when a school election is called, the trustees also shall:

- (1) Establish the time at which the polls are to open, if in their discretion they determine that the polls shall be open before 12 noon.
- (2) Establish the polling places for such election. There shall be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place and such trustee defined polling place boundaries shall be coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall be included in the notice for such election.
- (3) Appoint from among the qualified electors of the district, three judges for each polling place for such election and notify each judge of such appointment not less than ten days before the election.
- (4) Establish the format of the ballot for the election unless the ballot format is specified by the law which authorizes the election.

History: En. 75-6408 by Sec. 144, Ch. 5, L. 1971.

Preparation of Ballots

Where the ballots for a consolidation election were prepared to read only "For" or "Against" rather than "For consolida-

tion" or "Against consolidation" as required by statute, and testimony showed that in at least one instance a voter was confused by this reading and mismarked her vote, the election was on its face null and void. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

75-6409. Election notice. When the trustees of any district call a school election, they shall give notice of the election not less than twenty (20) days nor more than thirty (30) days before the day of the election by posting notices in three public places in the district; provided that in incorporated cities and towns at least one notice shall be posted at a public place in each ward. Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a newspaper or by a radio or television broadcast, the trustees may cause such notification to be made.

The notice of a school election, unless otherwise required by law, shall specify:

- (1) the date and polling places of the election;
- (2) the hours the polling places will be open;
- (3) each proposition to be considered by the electorate; and
- (4) if there are trustees to be elected, the number of positions subject to election and the length of term of each position.

If more than one proposition is to be considered at the same school election, each proposition shall be set apart and separately identified in the same notice, or published in separate notices.

History: En. 75-6409 by Sec. 145, Ch. 5, Cross L. 1971.

Cross-References

Notice of school bond election, sec. 75-7116.

Supplemental publication of notice by radio or television, secs. 19-201 to 19-203.

Notice and Ballot Not Misleading

Where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 370, 58 P 2d 264.

Notice of Election

Under the rule that failure to give the statutory notice of an election is immaterial where actual notice was given and the electors participated generally in the election, where it appeared that the clerk of the district had mailed circular letters to the taxpaying freeholders of the district stating the time and place of holding the election; that the only newspaper in the district published a news item with relation thereto; that handbills referring to

the election were distributed throughout the district; that the election was discussed generally by the people residing in the district, and that a larger number of votes was cast than at any previous election, failure to give the statutory notice by giving only nine days' instead of ten days' notice did not render the election void, and did not justify an injunction against collection of the tax, particularly where no proof was offered that any elector was deprived of the right to vote by reason of insufficient notice. Buckhouse v. Joint School District No. 28, 85 M. 141, 143, 146, 277 P 961.

Collateral References

Elections \$\sim 40-42.
29 C.J.S. Elections \\$\\$ 72-74.
26 Am. Jur. 2d 22-29, Elections, \\$\\$ 193197.

What is "public place" within requirements as to posting of school election notices. 90 ALR 2d 1212, 1216, 1220-1226.
Inclusion or exclusion of first and last

Inclusion or exclusion of first and last days in computing time for giving notice of school district election, which must be given a certain number of days before a known future date. 98 ALR 2d 1392.

75-6410. Qualifications of elector. Except as provided in section 75-6411, every person is entitled to vote at school elections if he has the following qualifications:

- (1) He has registered to vote with the county registrar in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in section 75-6413;
- (2) He shall be of a minimum age for voting provided by the constitution of the state of Montana;
- (3) He has met the residency requirement for voting as provided by the constitution of the state of Montana; and
 - (4) He is a citizen of the United States.

No person convicted of a felony has the right to vote unless he has been pardoned.

No person adjudicated insane has the right to vote unless he has been restored to capacity as provided by law.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971.

Compiler's Notes

Section 75-6410 was amended twice in 1971, once by Ch. 83, § 2 and once by Ch. 118, § 1. Both amendatory acts made similar changes in the language of subds. (2) and (3). In the original enactment by Ch. 5, § 146, these provisions read:

"(2) He is twenty-one (21) years of age or older;

"(3) He has resided in the state one (1) year and in the district thirty (30) days immediately preceding the election at which he offers to vote; and." The effective dates of the amendatory acts, Ch. 83 and Ch. 118, are February 27 and March 1, respectively. The language set forth above is that of Ch. 118, § 1.

Section 75-6411, cited in the first sentence of this section, was repealed by Sec. 14, Ch. 83, Laws 1971. The section provided additional qualifications for voters in elections to authorize property taxation or issuance of bonds.

Collateral References

Elections 59, 66, 68, 72. 29 C.J.S. Elections §§ 16-19. 25 Am. Jur. 2d 753 et seq., Elections, § 60 et seq.; 47 Am. Jur. 304, Schools, § 11.

Cross-Reference

Qualifications of electors, Const., Art. IX, § 2.

75-6410.1. Legislative policy and purpose. Section 2 of article IX of the Montana constitution provides that in order to entitle a person to vote upon a question which may be submitted to a vote of the people or electors, if the question concerns the creation of any levy, debt or liability, he must, in addition to possessing other qualifications, be a taxpayer whose name appears on the last preceding completed assessment roll. Recent decisions of the supreme court of the United States hold that similar provisions in the constitutions and statutes of other states are in conflct with the equal protection clause of the fourteenth amendment to the Constitution of the United States. The ability of the school districts to provide funds needed for essential governmental purposes depends in substantial part upon their ability to create valid levies, debts and liabilities and, when the same are required by law or the constitution to be submitted to a vote of the people or electors, to record and canvass such vote in such manner as to determine finally and conclusively whether or not the levy, debt or liability has been approved by the required majority vote of the electors qualified and offering to vote thereon. It is therefore the policy and purpose of this law to eliminate all statutory electors' qualifications for voting on the creation of any school district levy, debt or liability except such qualifications as are validly required by or pursuant to the Montana constitution.

History: En. Sec. 1, Ch. 83, L. 1971.

Title of Act

An act to repeal the taxpayer qualification of electors voting at school elections for issuing school district bonds, additional levy for general fund, consolidation or annexation with assumption of bonded indebtedness, and building reserve fund authorization; to repeal the taxpayer qualification of petitioners for elementary district territory transfer; amending sections 75-6410, 75-6412, 75-6414, 75-6509, 75-6516, 75-6923, 75-7112, 75-7113, 75-7114, 75-7117, 75-7134, and 75-7205, R. C. M. 1947; repealing section 75-6411, R. C. M. 1947; and providing an effective date.

Collateral References

Tax: rescission of vote authorizing school district expenditure or tax. 68 ALR 2d 1041.

75-6411. Repealed—Chapter 83, Laws of 1971.

Repeal

Section 75-6411 (Sec. 147, Ch. 5, L. 1971), providing additional qualifications

for voters in elections to authorize property taxation or issuance of bonds, was repealed by Sec. 14, Ch. 83, Laws 1971.

DECISIONS UNDER FORMER LAW

Payment of Taxes

The fact that some electors paid taxes on personal property only did not disqualify them from voting at the election, for the names of such electors appeared on

the assessment roll the same as did those who paid taxes on real estate. Habel v. High School District "C" of Cascade County, 129 M 588, 292 P 2d 349, 351.

75-6412. Elector challenges. Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in section 23-3611, R. C. M., 1947. Such challenge shall be determined in the same manner, using the same oath as provided in chapter 36 of Title 23, R. C. M., 1947.

Any person who shall have been challenged under any of the provisions of this section and who shall swear or affirm falsely before any school election judge shall be guilty of perjury and shall be punished accordingly.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971.

Cross-Reference

Penalty for perjury, sec. 94-3811.

Collateral References

Elections 223.
29 C.J.S. Elections § 209.
26 Am. Jur. 2d 67, Elections, § 237.

75-6413. Closure of registration. Registration for school elections shall close for thirty (30) days before any school election, but it shall not be necessary to publish any notice of such closing of registration.

History: En. 75-6413 by Sec. 149, Ch. 5, L. 1971.

Collateral References

Elections \$39. 29 C.J.S. Elections \$39. 25 Am. Jur. 2d 793, Elections, \$105.

75-6414. Listing of registered electors. After closing registration the county registrar shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place shall be prepared in the format of a precinct register book.

History: En. 75-6414 by Sec. 150, Ch. 5, L. 1971; amd. Sec. 4, Ch. 83, L. 1971.

Collateral References

Elections 108. 29 C.J.S. Elections § 47.

25 Am. Jur. 2d 794, Elections, § 109.

75-6415. Delivery of and charge for lists of registered electors. Before the day of the election, the registrar shall deliver a certified copy of the lists of registered electors for each polling place to the district which shall deliver them to the election judges prior to the opening of the polls. A charge of three cents (\$.03) per name shall be paid by the district to the county for preparing the lists of registered electors.

History: En. 75-6415 by Sec. 151, Ch. 5, L. 1971.

75-6416. Absentee voting. A qualified registered elector who will be absent from the district or physically incapacitated and unable to go to the polls on the day of a school election may vote by casting an absentee ballot. The superintendent of public instruction shall prepare the form of application for absentee ballots and other forms necessary for absentee voting at school elections and may make necessary rules to carry out the purpose of absentee voting as established by the provisions of the general state election laws of Montana.

History: En. 75-6416 by Sec. 152, Ch. 5, L. 1971.

Cross-Reference

State superintendent of public instruction to prepare forms and rules, sec. 75-5707.

Collateral References Elections © 204, 216(1). 29 C.J.S. Elections § 210(1). 26 Am. Jur. 2d 70 et seq., Elections, § 243 et seq.

75-6417. Voting machines and electronic voting systems. Whenever voting machines or electronic voting systems are available to a district. such voting devices may be used for a school election. Any district that uses a voting machine or an electronic voting system shall do so in accordance with the provisions of chapter 38 or chapter 39 of Title 23 of the Revised Codes of Montana. In construing the provisions of those chapters, the "county commissioners" and the "registrar" shall, for the purposes of this section, be considered to refer to trustees and "county" shall be considered to refer to district.

History: En. 75-6417 by Sec. 153, Ch. 5, L. 1971.

29 C.J.S. Elections § 203. 26 Am. Jur. 2d 64, 80, Elections, §§ 232,

Collateral References

Elections 222.

- 75-6418. General supervision and supplies. The trustees are the general supervisors of school elections. They are authorized to and shall administer oaths to election judges. Before the opening of the polls, the trustees shall cause the judges and each polling place to be supplied with:
- (1) a sufficient number of ballots for each proposition election or trustee election to be conducted;
- (2) at least six (6) cards instructing electors in the process of how to vote;
- (3) a list of electors prepared in the format of a precinct register book;
 - (4) a pollbook for the poll list;
 - (5) tally sheets;
- (6) a sufficient number of booths, each provided with a door or a curtain to screen the voter from view and furnished adequately to enable the voter to prepare his ballot;
 - (7) ballot boxes or canvas pouches with a lock and key; and
- (8) any other supplies necessary for the proper conduct of the elec-

History: En. 75-6418 by Sec. 154, Ch. 5, L. 1971.

29 C.J.S. Elections §§ 155, 193-197. 26 Am. Jur. 2d 63, 64, Elections, §§ 230, 231.

Collateral References

Elections = 163, 200-204, 227 (2), (6).

75-6419. Clerk of election judges and appointment for absent judge. Before conducting the school election and on the day of the election, the judges shall designate one of their number to act as clerk of such election. If any of the judges appointed by the trustees are not present at the time for the opening of the poll, the electors present at that time may appoint a qualified elector for such election to act in the place of the absent judge.

History: En. 75-6419 by Sec. 155, Ch. 5, L. 1971.

75-6420. Election expenses. All expenses necessarily incurred in the matter of holding school elections shall be paid out of the school funds of the district, except when such expenses are by law to be shared by a community college district for which the district is conducting an election. The trustees may pay the election judges of a school election at a rate not to exceed the prevailing federal minimum wage per hour of service in connection with such election.

History: En. 75-6420 by Sec. 156, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 78 C.J.S. Schools and School Districts 318.

- 75-6421. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate, and see that each elector has an adequate opportunity to cast his vote. To that end election judges shall:
- (1) post at least one (1) instruction card in each voting booth and not less than three (3) such cards elsewhere about the polling place;
 - (2) proclaim the opening and closing of the polls;
- (3) ensure that no more than one (1) person occupies a voting booth at one (1) time and that no person occupies a booth longer than is reasonably necessary;
- (4) enforce the rules against certain prohibited conduct as provided in section 23-3605, R. C. M., 1947;
- (5) aid a disabled elector in marking his ballot in the manner provided by section 23-3609, R. C. M., 1947; and
- (6) follow the remaining provisions of chapter 36 of Title 23, R. C. M., 1947, regulating the conduct of elections, and chapter 14 of Title 94, R. C. M., 1947, except that no deviation from those regulations shall vitiate the election so long as it can reasonably be concluded that neither the outcome of the election nor any individual elector was prejudiced by such deviation.

History: En. 75-6421 by Sec. 157, Ch. 5, L. 1971.

Validity of Ballots

Former statute relating to validity of ballots in general elections was applicable to school elections. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

Collateral References

Elections ≈ 197 et seq. 29 C.J.S. Elections § 190 et seq. 26 Am. Jur. 2d 55 et seq., Elections, § 225 et seq.

- 75-6422. Delivery of ballot, pollbook, tally sheet, and certifying election result. The judges shall conduct school elections in the following manner:
- (1) The election judges shall deliver the ballots to the elector offering to vote and shall cause the recording of such elector's signature on the registered elector listing for the polling place.
- (2) A pollbook shall be kept by the election clerk. The clerk shall record the name of each elector in the pollbook at the time his ballot is

deposited in the ballot box. One pollbook may be kept for two or more school elections conducted simultaneously at the same poll.

- (3) Immediately after closing the polls, the judges shall count ballots. If there are more ballots than the recorded number of electors in the pollbook, the judges shall draw by lot from the ballots, without seeing them, a sufficient number of ballots to equalize the number of ballots and the number of electors.
- (4) After the number of electors and ballots have been equalized, the judges shall proceed to count the ballots. The clerk shall enter on the tally sheet for the trustee election the name of every person voted for trustee, grouping them by length of term of the trustee position for which they were a candidate. The votes cast for a person shall be tallied opposite his name. When a proposition is presented at a school election, the clerk shall enter "for" and "against" on the tally sheet and record each vote opposite the appropriate entry on the tally sheet. A separate tally sheet shall be kept for each election of trustees and for each proposition.
- (5) After the votes have been entered on a tally sheet, the judges and clerk shall sign it and certify upon the tally sheet the following information:
- (a) the number of votes cast for each person who received votes for trustee and the length of term for which he received these votes; or
- (b) the total number of votes cast "for" and "against" a proposition. The certified totals shall be verified by the judges as being correct to the best of their knowledge, before an officer authorized to administer oaths. No informality in such certification shall vitiate the election, if the number of votes for each person or for or against each proposition can reasonably be ascertained from each tally list.
- (6) The school election judges shall return the pollbook, ballots, certified tally sheets, and the registered elector listing to the trustees of the district as soon as possible.

History: En. 75-6422 by Sec. 158, Ch. 5, L. 1971.

Ballots Exceeding Number of Recorded Electors

Bond election was void where judges and clerks turned ballots right side up, placed "yes" ballots and "no" ballots in separate piles before counting them and then disallowed sufficient number of "no" ballots to allow "yes" ballots to prevail. Hehn v. Olson, 138 M 576, 358 P 2d 431, 433.

Where judge's intentional withdrawal of five votes "for consolidation," rather than drawing by lot as required by statute, left the result of the election doubtful, then the election was void. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

Collateral References

26 Am. Jur. 2d 55 et seq., 115, Elections, §§ 225 et seq., 291.

75-6423. Trustees canvass of votes and issuance of election certificate. At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote. Such canvass shall include a redetermination of the total votes cast for each person for trustee

or the total votes cast "for" and "against" each proposition, as shown on the tally sheet or sheets.

After the redetermination of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, the certificate shall be issued to the elected trustee and the county superintendent designating the term of the trustee position to which he has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate shall be issued within fifteen (15) days after the election to that official or public body which ordered the election. When the election has been ordered by resolution of the trustees, the canvassed results shall be published immediately in a newspaper that will give notice to the largest number of people of the district.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971.

Cross-Reference

School bond elections, canvassing, sec.

Failure to Canvass Bond Election

Failure of trustees to canvass vote as required by statute did not make bonds issued by school district illegal and void. Long v. School District No. 44, 149 M 220, 425 P 2d 822.

Collateral References

Elections 257, 258, 265. 29 C.J.S. Elections §§ 235-237, 240. 26 Am. Jur. 2d 122-125, 127, Elections, §§ 298-301, 304.

CHAPTER 65

SCHOOL DISTRICT ORGANIZATION AND REORGANIZATION

Section 75-6501. Definition of elementary and high school districts. 75-6502. Confirmation of existing district boundaries. 75-6503. District classification. Permanent record of district boundaries. 75-6504. 75-6505. Time limitation for district boundary changes. 75-6506. Elementary district consolidation. 75-6507. Conditions for elementary district annexation. 75-6508. Elementary district annexation. 75-6509. Consolidation or annexation election with assumption of bonded indebtedness. 75-6510. Consolidation or annexation election without assumption of bonded indebtedness. 75-6511. Elementary district consolidation of two or more counties to organize joint elementary district. 75-6512. Elementary district abandonment. Joint elementary district abandonment. Joint elementary district dissolution. 75-6513. 75-6514. Boundary change of licensed child care institution elementary 75-6515. 75-6516. Transfer of territory from one elementary district to another. Limitations for creation of new elementary district. 75-6517. 75-6518. Procedure for creation of a new elementary district. Methods of changing high school district boundaries. 75-6519.

75-6520. Establishment of high school districts in a county. 75-6521. High school boundary commission and boundary change, division or redivision hearing procedure.

Approval of high school district boundary when elementary district

75-6522. territory divided by commission.

75-6523. Counter-proposed high school district boundaries by electors and

75-6524.

High school district abandonment.
Limitations for organization of joint high school district.
Procedure for organization of joint high school district. 75-6525.

High school district consolidation by board of county commissioners. High school district boundary approval by superintendent of public 75-6528. instruction. 75-6529. Bonded indebtedness against original territory except when assumed by election. Property tax valuation after district boundary change. Trustees of district affected by boundary change. 75-6530. 75-6531. 75-6532. Cash disposition when district ceases to exist. 75-6533. Cash disposition when districts consolidated. 75-6534. Cash disposition when new elementary district created. No cash disposition when territory transferred. 75-6535. Property disposition when district boundaries changed. 75-6536. 75-6537. Surrender of records when district ceases to exist. County high school unification. 75-6538. Transactions after approved county high school unification. 75-6539. Voluntary consolidation and annexation incentive plan-purpose. 75-6540. 75-6541. Incentive plan-definitions. Incentive plan-authority and time for application for bonus pay-75-6542. 75-6543. Incentive plan-application to superintendent of public instruction -contents. Incentive plan-duties of superintendent of public instruction on 75-6544. approval or disapproval of application. Incentive plan-disbursal and deposit of bonus payments. Incentive plan-effect of reduction in territory. 75-6546. Incentive plan-effect of addition of component districts.

75-6501. Definition of elementary and high school districts. As used in this Title, except as defined in section 75-7102 for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this Title to provide public educational services under the jurisdiction of the trustees prescribed by this Title. High school districts may encompass all or parts of the territory of one (1) or more elementary districts.

An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade eight (8), and for preschool programs and kindergartens. A high school district is a district organized for the purpose of providing those public educational services authorized by this Title for all grades beyond grade eight (8), including post-secondary programs, except those programs administered by community college districts or the Montana university system.

Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school districts shall be considered a high school district under this Title and the trustees of the elementary district shall be the trustees of the

high school district. Such an elementary district operating a high school shall not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes.

As used in this Title, unless the context clearly indicates otherwise, a county high school shall be considered a high school district subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the high school district for a county high school shall be:

- (1) the high school district boundaries established by the county high school boundary commission; or
- (2) if no such boundaries have been established, the county boundaries, except for any territory located in a joint high school district. Any county high school recognized as a high school district under the provisions of subsection (2) above shall not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in section 75-7133.

History: En. 75-6501 by Sec. 160, Ch. 5, L. 1971.

Cross-References

Authority of school districts and public institutions to accept gifts, sec. 11-1006. County commissioner's authority to divide county into school districts, sec. 16-1002.

Interlocal co-operation agreements, secs.

16-4901 to 16-4904.

Liability of district, sec. 75-5940.

Continuation in Existence

A school district lawfully organized is a public corporation and remains such until disorganized in some manner recognized by law. State ex rel. School District No. 28 v. Urton, 76 M 458, 463, 248 P 369.

De Facto Corporation

It would seem that where a school district attempted in good faith to annex another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district, and the district thus created was acquiesced in by all concerned for more than five years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds is sued by the district. Henderson v. School District No. 44, 75 M 154, 156, 242 P 979, distinguished in 83 M 282, 291, 272 P 543.

Negligence Liability

In absence of statute imposing liability for negligence upon school districts or their trustees, they may not be held liable, although statute contains the general provision that a school district may sue and be sued. Perkins v. Trask, 95 M 1, 7, 23 P 2d 982, distinguished in 118 M 586, 587, 169 P 2d 229.

Powers of District

A school district is a body corporate, but does not possess the powers of local legislation and control which are the distinguishing characteristics of a municipal corporation. Hersey v. Neilson, 47 M 132, 141, 131 P 30.

A school district is a public corporation, but with very limited powers. It may, through its board, exercise only such authority as is conferred by law, either expressly or by necessary implication. Finley v. School District No. 1, 51 M 411, 415, 153 P 1010. See also Jay v. School District No. 1, 24 M 219, 232, 61 P 250; State ex rel. Cartersville Irr. Dist. v. McGraw, 74 M 152, 156, 240 P 812; Day v. School District No. 21, 98 M 207, 38 P 2d 595.

School District Defined

Former section defined a school district to be "the territory under the jurisdiction of a single board, designated as board of trustees." It was clear that the term "school district" had reference solely to the public school system. Box v. Duncan, 98 M 216, 222, 38 P 2d 986.

Collateral References

Schools and School Districts 21, 64, 78. 78 C.J.S. Schools and School Districts \$\\$24-26, 240, 270.

47 Am. Jur. 304-308, Schools, §§ 12-14.

75-6502 SCHOOLS

Right of school district to maintain action based on misapportionment of school money. 105 ALR 1273.

Tort liability of public schools and in-

stitutions of higher learning. 160 ALR 7 and 86 ALR 2d 489.

Power of school district to employ coun-

sel. 75 ALR 2d 1339.

75-6502. Confirmation of existing district boundaries. All districts established under the laws of the state of Montana or the territory of Montana and defined by the boundaries described in the records of each county on the effective date of this act shall be recognized as the districts of the state on such date.

History: En. 75-6502 by Sec. 161, Ch. 5, L. 1971.

Compiler's Note

The effective date of this act was January 26, 1971.

75-6503. District classification. Each elementary district shall have a classification of:

- (1) first class, if it has a population of six thousand five hundred (6,500) or more;
- (2) second class, if it has a population of one thousand (1,000) or more but less than six thousand five hundred (6,500); or
- (3) third class, if it has a population of less than one thousand (1,000). The population of an elementary district shall be determined by the county superintendent on the basis of the best available population information for the district or; if the county superintendent deems it more equitable, he shall multiply by three (3) the approved number of school census children from the last completed census report of the district who are six (6) years of age or older but who have not reached their twenty-first (21st) birthday.

The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare such district's classification to be changed in accordance with the determined population, except that the classification of an elementary district shall not be changed more than once every five (5) years.

Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions shall be filled in the manner provided for filling trustee vacancies. Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.

The classification of a high school district shall be the same as the classification of the elementary district where the high school building is

located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly, and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in section 75-5905 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971.

Collateral References

Schools and Schools Districts = 21, 52. 78 C.J.S. Schools and School Districts § 24, 105.

47 Am. Jur. 304, 316, Schools, §§ 12, 29.

75-6504. Permanent record of district boundaries. The board of county commissioners shall maintain a permanent record which plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in his office and shall be responsible for keeping the record current.

If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, he shall change, harmonize, and describe them accurately, and he shall make a report of such boundary adjustments to the board of county commissioners. When the board of the county commissioners approves a district boundary report submitted by the county superintendent, such boundaries shall be the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district.

History: En. 75-6504 by Sec. 163, Ch. 5, L. 1971.

Limitation on Powers

There was no authority on the part of the county superintendent or board of county commissioners, under the guise of defining boundaries, to reach out and include in an existing district noncontiguous tracts of land not included therein; the county superintendent was authorized to make minor changes as necessary to make the boundaries definite and certain, but not to change the boundaries of the existing district by attaching lands wherever situated in the county not a part of any school district. State ex rel. Lantz v. Morris, 113 M 187, 191, 126 P 2d 1101.

Collateral References

Schools and School Districts 30, 48(6). 78 C.J.S. Schools and School Districts 88 32, 99.

47 Am. Jur. 309, Schools, § 17 et seq.

75-6505. Time limitation for district boundary changes. No elementary district shall be created nor shall any elementary district boundaries be changed between the first day of March and the second Monday of August of any calendar year except when:

(1) the entire territory of a district is annexed or attached to another district;

- (2) the entire territory of the portion of a joint district located in one (1) county is annexed or attached to another district; or
 - two (2) or more districts are consolidated in their entirety.

History: En. 75-6505 by Sec. 164, Ch. 5,

Consolidation of High School

Former section relating to both elementary and high schools was not impliedly repealed by statute authorizing high school consolidation; action of com-missioners in consolidating high schools in March, thereby creating new district at least for high school purposes, was void. Box v. Duncan, 98 M 216, 38 P 2d

Relation Back of Order

District court, on application for writ of mandate, properly ordered a superintendent to hear a petition to have unattached territory annexed to two adjoining districts erroneously denied by him, nunc pro tune as of February 17th of the preceding year when he should have acted, his action thereby relating back. State ex rel. Lantz v. Morris, 113 M 193, 197, 126 P 2d 1104.

Collateral References

Schools and School Districts 32-34. 78 C.J.S. Schools and School Districts §§ 32, 35. 47 Am. Jur. 311, Schools, § 19.

Discretion of administrative officers as to changing boundaries of school districts. 65 ALR 1523 and 135 ALR 1096.

Right of political division to challenge acts or proceedings by which its boundaries or limits are affected. 86 ALR 1367, 1376.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts, 121 ALR 826.

- 75-6506. Elementary district consolidation. Any two (2) or more elementary districts in one (1) county may consolidate to organize an elementary district. The consolidation shall be conducted under the following procedure:
- At the time the consolidation proposition is first considered, the districts involved shall jointly determine whether the consolidation shall be made with or without the mutual assumption of the bonded indebtedness of each district by all districts included in the consolidation proposition.
- A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:
- the trustees may pass a resolution requesting the county superintendent to order an election to consider a consolidation proposition involving their district; or
- not less than twenty per cent (20%) of the electors of an elementary district who are qualified to vote under the provisions of section 75-6410 may petition the county superintendent requesting an election to consider a consolidation proposition involving their resident district.
- When the county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, he shall, within ten (10) days after the receipt of the last resolution or petition and as provided by section 75-6406, order the trustees of each elementary district included in the consolidation proposition to call a consolidation election.
- (4) Each district, individually, shall call and conduct an election in the manner prescribed in this Title for school elections. In addition:
- if the districts to be consolidated are to mutually assume the bonded indebtedness of each district involved in the consolidation, the

consolidation election also shall follow the procedures prescribed in section 75-6509; or

- (b) if the districts to be consolidated are not to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election also shall follow the procedures prescribed in section 75-6510.
- (5) After the county superintendent has received the election certification under the provisions of section 75-6423 from the trustees of each district included in a consolidation proposition, he shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, he shall, within ten (10) days after the receipt of the last election certificate, order the consolidation of such districts. If it be for consolidation with the mutual assumption of bonded indebtedness of each elementary district by all districts included in the consolidation order, such order shall specify that all the taxable real and personal property of the consolidated district shall assume the bonded indebtedness of each district. In addition, such order shall specify the number of the consolidated elementary district and shall contain the county superintendent's appointment of the trustees for the consolidated district who shall serve until a successor is elected at the next succeeding regular school election and qualified. The superintendent shall send a copy of such order to the board of county commissioners and to the trustees of each district incorporated in the consolidation order. If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts shall fail and the county superintendent shall notify each district of the disapproval of the consolidation proposition.

History: En. 75-6506 by Sec. 165, Ch. 5, L. 1971.

Cross-References

Conditions under which school election called, sec. 75-6406.

Voluntary consolidation and annexation incentive plan, sec. 75-6540 et seq.

Abandonment of District

An order of a county superintendent of schools for the abandonment of a school district was not void for want of jurisdiction because of no attempt at compliance with predecessor to this section, since section had nothing to do with the abandonment of a school district. State ex rel. McDonnell v. Musburger, 111 M 579, 582, 111 P 2d 1038.

Time for Posting Notices

Former section requiring county superintendent upon receipt of consolidation petition of school districts "to cause a ten days posted notice" to be given of the election meant that the superintendent has ten days within which to act voluntarily, and was not a limitation on the time within which the election notices may be posted. Swaim v. Redeen, 101 M 521, 529, 55 P 2d 1.

Collateral References

Schools and School Districts 33, 37, 38, 40, 41(1).

40, 41(1).
78 C.J.S. Schools and School Districts §§ 36 et seq., 57.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

DECISIONS UNDER FORMER LAW

Provisions Jurisdictional

Section requiring petition by a majority of resident freeholders in a school district as prerequisite to consolidation was jurisdictional and not merely directory. State ex rel. Wilson v. Musburger, 114 M 175, 178, 133 P 2d 586.

- 75-6507. Conditions for elementary district annexation. An elementary district may be annexed to another elementary district located in the same county when:
- (1) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, a first-class district, or a second-class district.
- (2) a third-class district where a high school is located is annexed to a first-class district or a second-class district; or
 - (3) a second-class district is annexed to a first-class district.

The annexation of elementary districts shall be conducted under the provisions of section 75-6508.

History: En. 75-6507 by Sec. 166, Ch. 5, L. 1971.

- 75-6508. Elementary district annexation. An elementary district may be annexed to another elementary district located in the same county in accordance with the following procedure:
- (1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation shall be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.
- (2) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:
- (a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or
- (b) not less than twenty per cent (20%) of the electors of the district who are qualified to vote under the provisions of section 75-6410 may petition the county superintendent requesting an election to consider an annexation proposition for their district.
- (3) Before ordering an election on the proposition the county superintendent shall first receive from the trustees of the annexing district a resolution giving him the authority to annex such district.
- (4) When the county superintendent has received authorization from the annexing district, he shall, within ten (10) days after the receipt of the resolution or a valid petition from the district to be annexed and as provided by section 75-6406, order the trustees of the district to be annexed to call an annexation election.
- (5) The district shall call and conduct an election in the manner prescribed in this Title for school elections. In addition:
- (a) if the district to be annexed is to jointly assume with the annexing district, the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in section 75-6509; or
- (b) if the district to be annexed is not to jointly assume with the annexing district, the bonded indebtedness of the annexing district, the

annexation election shall also follow the procedures prescribed in section 75-6510.

(6) After the county superintendent has received the election certificate from the trustees of the district conducting the annexation election under the provisions of section 75-6423 and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the elementary district voting on such proposition to the elementary district that has authorized the annexation to its territory. Such order shall be issued within ten (10) days after the receipt of the election certificate and, if it be for annexation with the assumption of bonded indebtedness, shall specify that all the taxable real and personal property of the annexed territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order. If the annexation proposition is disapproved in the district to be annexed, it shall fail and the county superintendent shall notify each district of the disapproval of the annexation proposition.

History: En. 75-6508 by Sec. 167, Ch. 5, T. 1971.

Cross-Reference

Voluntary consolidation and annexation incentive plan, sec. 75-6540 et seq.

Collateral References

Schools and School Districts 37, 38, 40, 41(1).
78 C.J.S. Schools and School Districts § 36 et seq.

- 75-6509. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in section 75-6506, or an annexation election involving the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in section 75-6508, shall comply with the following procedures in addition to those prescribed by this Title for other school elections:
- (1) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness."
- (2) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness."
- (3) Any elector qualified to vote under the provisions of section 75-6410 may vote.
- (4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of section 75-6423, they shall decide according to the following procedure, if the proposition has been approved:
- (a) Determine if a sufficient number of the qualified electors of the district have voted to validate the election and have voted to approve

the election proposition in the same manner required for bond elections by section 75-7117; and

(b) When the proposition is approved under subsection (3)(a), determine the number of votes "FOR" and "AGAINST" the proposition. The proposition shall be approved in the district if a majority of those voting approve the proposition. If the proposition is disapproved under either the provisions of subsection (3)(a) or (3)(b), the proposition shall be disapproved in the district.

History: En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971.

Cross-Reference

School elections generally, sec. 75-6401 et seq.

Preparation of Ballots

Where the ballots for a consolidation election were prepared to read only "For" or "Against" rather than "For consolidation" or "Against consolidation" as required by statute and testimony showed that in at least one instance a voter was confused by this heading and mismarked

her vote, the election was on its face null and void. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

Collateral References

Schools and School Districts 41(2).
78 C.J.S. Schools and School Districts
74.

47 Am. Jur. 312, Schools, § 21.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of individual districts. 121 ALR 826.

75-6510. Consolidation or annexation election without assumption of bonded indebtedness. A consolidation election without the assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in section 75-6506, or an annexation election without the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in section 75-6508, shall be conducted in the manner prescribed by this title for school elections. Any elector qualified to vote under the provisions of section 75-6410 may vote at the election.

In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness." The consolidation proposition shall be approved by a district if a majority of those voting in a district approve the proposition, otherwise it shall be disapproved.

In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness." The annexation proposition shall be approved by a district if a majority of those voting approve the proposition, otherwise it shall be disapproved.

History: En. 75-6510 by Sec. 169, Ch. 5, L. 1971.

Cross-Reference

School elections generally, sec. 75-6401 et seq.

75-6511. Elementary district consolidation of two or more counties to organize joint elementary district. Any two (2) or more elementary districts located in more than one (1) county and whose territory is contiguous may consolidate to organize a joint elementary district. When a

joint district consolidation proposition is to be introduced and considered in two (2) or more districts, the consolidation procedure for elementary district consolidation without the assumption of bonded indebtedness prescribed in sections 75-6506 and 75-6510 shall be used except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in section 75-6506.

History: En. 75-6511 by Sec. 170, Ch. 5, L. 1971.

Cross-References

Voluntary consolidation and annexation incentive plan, sec. 75-6540 et seq.

Appeal To County Commissioners

An appeal lay from order creating joint school district to the boards of county commissioners of counties affected, and the effect of the appeal was simply to suspend or delay the effective creation of the district, and not to vacate the order of creation; if, on appeal, opinion was equally divided between the boards of county commissioners, one board favoring creation and the other opposed thereto, the order of creation by the county school superintendents stood affirmed. State ex rel. School District No. 8 v. Lensman, 108 M 118, 88 P 2d 63.

Creation of New County

Where school district territory was cut in two by creation of new county and the county commissioners charged with the duty of dividing the new county into school districts left the boundaries of the district in question, the district ipso

facto became a joint one, and therefore refusal of the county treasurer of the old county in which a portion of the district lay to transmit to the treasurer of the new county the funds collected by him as taxes upon the property within that portion for school purposes was wrongful. State ex rel. School District No. 28 v. Urton, 76 M 458, 464, 248 P 369.

Mode of Procedure

Former section did not fully or clearly provide the procedure of creating joint school districts and it was duty of the officers empowered to create such districts to adopt any mode of procedure reasonably suitable to carry the legislative intention into effect. State ex rel. School District No. 8 v. Lensman, 108 M 118, 128, 88 P 2d 63.

Collateral References

Schools and School Districts ⊕33.
78 C.J.S. Schools and School Districts §§ 57, 58.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of individual districts. 121 ALR 826.

75-6512. Elementary district abandonment. The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of such district to a contiguous district of the county when:

(1) a school has not been operated by a district for at least one hundred eighty (180) days under the provisions of section 75-7402 for each

of three (3) consecutive school fiscal years; or

(2) there is an insufficient number of residents who are qualified electors of the district that can and will serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

The county superintendent shall notify the elementary district that has not operated a school for two (2) consecutive years before the first day of the third year that the failure to operate a school for one hundred eighty (180) days during the ensuing school fiscal year shall constitute grounds for abandonment of such district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide such notification shall not constitute a waiver of the abandonment requirement prescribed in subsection (1) above.

75-6513 SCHOOLS

Any abandonment under subsection (1) shall become effective on the first day of July. Any abandonment under subsection (2) of an elementary district shall become effective immediately on the date of the abandonment order.

History: En. 75-6512 by Sec. 171, Ch. 5, L. 1971.

Abandonment of Nonoperating District

County superintendent of schools properly ordered abandonment of elementary school district where school had not been maintained within said district during the last three consecutive school years and an average of four or less pupils had been furnished transportation to another elementary school. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518.

Consolidation Law Inapplicable

Section relating to the consolidation of school districts had nothing to do with the abandonment of a school district and was not dependent upon any question of whether school was held within either or any of the districts in question. State ex rel. McDonnell v. Musburger, 111 M 579, 582, 111 P 2d 1038.

Exhaustion of Administrative Remedy Required

Where plaintiff seeking a writ of mandate to annul an order of a county school superintendent directing the abandonment of a school district had the right of appeal to the state superintendent, and, if unsuccessful there, could have had the matter passed upon by the district court on writ

of review, but did not pursue such remedy, the writ of mandate was not available to him. (See sec. 93-9103.) State ex rel. McDonnell v. Musburger, 111 M 579, 584, 111 P 2d 1038.

Grounds for Review

Contiguity is not the only requirement for attaching an abandoned district to another district; thus district court should have granted writ of review where manner of attachment allegedly required children to travel fourteen miles farther each way to get to more overcrowded schools and worked an undue hardship on both parents and children. Potter v. Miller, 145 M 197, 399 P 2d 994.

Transportation of Pupils

On abandonment of an elementary school district no student eligible to attend high school is deprived of the opportunity of attending school. Transportation must be provided by the high school district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518.

Collateral References

Schools and School Districts 36, 44. 78 C.J.S. Schools and School Districts \$\ 27, 59.

47 Am. Jur. 309, Schools, § 17.

75-6513. Joint elementary district abandonment. Any joint elementary district shall be abandoned for the reasons prescribed in section 75-6512 or when the taxable value of the taxable property of the portion of the joint district that is located within any one of the counties is of so little value that the continued inclusion of such portion in the joint district is not justified. The county superintendent designated by section 75-6720 for school budgeting purposes shall be responsible for ordering the abandonment of the joint district and shall immediately send a copy of such order to the county superintendent of each county with territory in the joint district.

After the issuance or receipt of the abandonment order, each county superintendent shall attach the territory within his county to a contiguous elementary district within his county; except when the district is abandoned because of the lack of taxable property in one county's territory of the district and a school is operated in another county's territory of the district which territory has a taxable value of seventy-five thousand dollars (\$75,000) or more, the county superintendent of the county where such territory is located shall not attach it to another district. Such territory shall continue to operate as an elementary district within the county.

Any abandonment of a joint elementary district shall become effective on the date of the abandonment order except that district abandonments under the provisions of subsection (1) of section 75-6512 shall become effective on the first day of July.

History: En. 75-6513 by Sec. 172, Ch. 5, L. 1971.

Authority To Change Boundaries

Aside from statutory limitations, legislature has delegated to the county superintendent of schools and to the board of county commissioners a full measure of discretionary power in creating and changing the boundaries of school districts. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

County Commissioners' Power

Where administrative official exercises his power within the limits fixed by statute, not arbitrarily or fraudulently, but within his sound discretion, the courts may not interfere. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

75-6514. Joint elementary district dissolution. Any joint elementary district may be dissolved. A proposition to dissolve a joint elementary district shall be introduced by a petition signed by a majority of the electors, qualified under the provisions of section 75-6410, who reside in the territory of the joint district that is located within one (1) county. Such petition shall be addressed and presented to the county superintendent of the county of residence of the petitioners.

Whenever a county superintendent receives a valid petition for the dissolution of a joint elementary district, he shall immediately notify the county superintendents of all the other counties with territory located in the joint district. The county superintendents jointly shall, within ten (10) days after the receipt of the petition and as provided by section 75-6406, order the trustees of the joint district to call an election. The trustees shall call and conduct, at the same time, separate elections in each portion of the joint district that is located in a separate county. Such elections shall be called and conducted in the manner prescribed in this title for school elections and shall be considered as if each were an election in a separate district. An elector who may vote at a joint district dissolution election shall be qualified to vote under the provisions of section 75-6410. The election judges for each separate election in the joint district shall send the election certificate to the county superintendent of the county in which they serve.

After the receipt of the election certificates, the county superintendents shall jointly determine the result of such election on the following basis:

- (1) If a majority of all the joint district electors voting at each election conducted in the joint district are in favor of the dissolution of the joint district, the dissolution of the joint elementary district shall be approved;
- (2) If two-thirds (2/3) of the electors voting at one of the elections conducted in a county's portion of the joint district vote in favor of the joint district dissolution, the dissolution of that portion of such joint district may be approved if all the county superintendents involved in such dissolution proposition agree that such dissolution will not place an undue hardship on any other county's portion of the joint district and there is no good and sufficient reason why such dissolution should not be made; or

(3) If the conditions of either subsection (1) or (2) cannot be satisfied, the dissolution of the joint district shall be disapproved.

The county superintendents shall jointly order the joint elementary district dissolution if the proposition is approved and, whether it has been approved or disapproved, shall jointly notify the joint district of the result. The dissolution of a joint district shall become effective on the first day of the ensuing school fiscal year.

When the dissolution of a joint elementary district has been approved and ordered under subsection (1) above, the county superintendent of each county shall individually order the attachment of the territory of the dissolved joint elementary district within his county to a contiguous elementary district within his county; except when a school is operated in such territory, in which case the territory shall operate as a separate elementary district of the county.

When the dissolution of a joint elementary district has been approved and ordered under the provisions of subsection (2) above, the county superintendent of the county where the dissolved portion of the joint elementary district is located shall attach such territory to a contiguous elementary district within his county.

In the event a dissolution proposition is disapproved, no subsequent joint elementary district dissolution election shall be held within three (3) years thereafter.

History: En. 75-6514 by Sec. 173, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts § 59 et seq. 47 Am. Jur. 309, Schools, § 17.

Collateral References

Schools and School Districts 44.

75-6515. Boundary change of licensed child care institution elementary district. The boundaries of any elementary district created under the provisions of chapter 105, Laws of 1965 shall be changed by the acquisition of any land contiguous to the district by the licensed child care institution for which such district was created. The boundaries shall be changed to include the additional acquired land in the district.

History: En. 75-6515 by Sec. 174, Ch. 5, L. 1971.

Compiler's Note

Chapter 105, Laws of 1965 (sec. 75-5501 et seq.), referred to in the first paragraph, was repealed by Sec. 496, Ch. 5, Laws 1971.

- 75-6516. Transfer of territory from one elementary district to another. A majority of the electors of any elementary district, who are qualified to vote under the provisions of section 75-6410 and who reside in territory which is a part of an elementary district, may petition the county superintendent to transfer such territory to another elementary district when:
- (1) such territory is contiguous to the district to which it is to be attached;
- (2) such territory is not located within three miles, over the shortest practical route, of an operating school of the district from which it is to be detached; and

(3) the transfer of such territory will not reduce the taxable value of the district to less than seventy-five thousand dollars (\$75,000) unless the remaining territory of the district will contain not less than fifty thousand (50,000) acres of nontaxable Indian land.

The petition shall be addressed to the county superintendent and shall describe the territory that is requested to be transferred and to what district it is to be transferred, state the reasons why such transfer is requested and state the number of elementary school-age children residing in such territory.

On receipt of a valid petition for a territory transfer, the county superintendent shall file such petition, set a hearing place, date, and time for consideration of the petition that is not more than forty (40) days after receipt of the petition and give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be transferred.

The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of the affected districts shall be heard. If the county superintendent shall deem it advisable and in the best interests of the residents of such territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders shall be final thirty (30) days after its date unless it is appealed to the board of county commissioners by a resident or taxpayer of either district affected by the territory transfer. The decision of the board of county commissioners, after a hearing on such matter and consideration of the material presented at the county superintendent's hearing, shall be final.

Whenever a petition to transfer territory from one elementary district to another elementary district would create a joint elementary district or affect the boundary of an existing joint elementary district, the petition shall be presented to the county superintendent of the county where the territory is located. Such county superintendent shall notify any other county superintendents of counties with districts affected by such petition and the duties prescribed in this section for the county superintendent and the board of county commissioners shall be performed jointly by such county officials.

History: En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971.

County Commissioners' Power

Statute did not give the board of county commissioners power to act arbitrarily, or without a hearing, or in disregard of the evidence of matters which by the terms of the statute, it should consider. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

De Facto Corporation

It would seem that where a school district attempted in good faith to annex

another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district, and the district thus created was acquiesced in by all concerned for more than five years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds issued by the district. Henderson v. School District No. 44, 75 M 154, 242 P 979, distinguished in 83 M 282, 291, 272 P 543.

Indian Territory

Since former statute contemplated that Indian lands be in a school district and that Indian children be counted in apportioning school moneys, it was the superintendent's mandatory duty to attach territory on an Indian reservation to an adjacent district or districts, no petition on the part of anyone being required as a condition precedent. State ex rel. Lantz v. Morris, 113 M 193, 196, 126 P 2d 1104.

Matters Considered

In determining whether certain territory should be transferred from one district to another, consideration can be given the financial condition of the districts, the means and convenience of communication therein, the number and places of residences of the children therein, their ages, and other matters that show the change to be advisable or otherwise and what is for the best interest of the territory proposed to be transferred. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

Collateral References

Schools and School Districts 32, 34, 37 (1-5), 39.

78 C.J.S. Schools and School Districts §§ 32, 34, 36 et seq.

- 75-6517. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts when:
- (1) the taxable value of the taxable property of the territory proposed to be included in such new district is seventy-five thousand dollars (\$75,000) or more, except that when fifty thousand (50,000) acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;
- (2) the taxable value of the taxable property of each existing district from which territory would be detached will be seventy-five thousand dollars (\$75,000) or more after the territory is detached; and
- (3) the number of school census children between the ages of six (6) and sixteen (16) years according to the last completed district census reports in any of the existing districts is not reduced to less than fifteen (15).

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 31 et seq.

78 C.J.S. Schools and School Districts § 27 et seq.

47 Am. Jur. 309 et seq., Schools, § 17 et seq.

- 75-6518. Procedure for creation of a new elementary district. The petition requesting the creation of a new elementary district out of the territory of an elementary district or districts shall be addressed to the county superintendent and shall:
- (1) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;
- (2) state the reasons why the creation of a new district is requested; and
- (3) be signed by the parents or guardians of not less than ten (10) children between the ages of six (6) and sixteen (16) years who reside in the territory that would be included in the new district and who reside more than three (3) miles over the shortest practical route from an operating school.

When a county superintendent receives a valid petition requesting the creation of a new district, he shall file such petition, set a hearing place, date, and time for consideration of such petition that is not more than forty (40) days after the receipt of the petition and give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this Title for school elections, with at least one such notice posted in the territory to be included in the new district.

The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of section 75-6410. A valid protest petition shall conclusively deny the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts shall be heard. If the county superintendent shall deem it advisable and in the best interests of the residents of the proposed new district, he shall grant the petitioned request and order the creation of a new elementary district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall, by order, deny the request.

Either of the county superintendent's orders may be appealed to the board of county commissioners within thirty (30) days after the date of such order. Such appeal shall be in writing, signed by not less than three (3) resident taxpayers, and shall state sufficient facts to show the appellants' right to appeal the order. The board of county commissioners shall call a hearing of such appeal for the first regular meeting of the commission that will allow notice of the hearing to be given in accordance with the requirements for notice of school elections. After considering the material presented at the county superintendent's hearing and such other material as is presented at its hearing, the board of county commissioners shall render a decision on the creation of such new elementary district. Such decision shall be final.

When a new elementary district is created, the county superintendent shall appoint the trustees of the new district giving preference in his selections to any trustees who were trustees of an old district and who reside in the new district. Any trustee position vacancies that may occur in the other districts shall be filled in the manner provided for filling trustee position vacancies for such district. Any trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and qualified.

The order of the county superintendent or, if his order is appealed, the decision of the board of county commissioners creating a new district under this section shall be null and void and the new district shall cease to exist, if such district does not open and operate a school within eight (8) months after the date of such order or decision. If the new district does not satisfy this requirement, the territory shall be re-incorporated in the district or districts in which it was located before the creation of such new district, and the trustees shall, thereafter, be without capacity to act.

History: En. 75-6518 by Sec. 177, Ch. 5, L. 1971.

Error in Description Not Fatal

Where petition for creation of a new school district contained errors in describing territory to be included, but only land actually intended was included, the misdescription did not invalidate the creation of the new district. State ex rel. School District No. 8 v. Lensman, 108 M 118, 125, 88 P 2d 63.

Hearing on Creation

While the term "hearing" would include the reception of testimony if any were offered, it is not indispensable in the creation of a joint school district by the county superintendents where the facts are presented in some other competent manner, including, perhaps, personal knowledge of the superintendents; the loss of taxable valuation of property working to the disadvantage of one of the counties is up to the discretion and good judgment of those officers. State ex rel. School District No. 8 v. Lensman, 108 M 118, 126, 88 P 2d 63.

Order Creating District

A new school district can be "created" only by a county superintendent of schools on compliance with statute, not by the judgment of a district court entered in pursuance of a remittitur from the supreme court in a cause in which the matter of its creation was determined. Weasel Head v. Armstrong, 99 M 364, 369, 43 P 2d 243, explained in 108 M 118, 124, 88 P 2d 63.

Petition-Contents

A petition for the creation of a new school district is not a pleading, the contents of which are subject to critical legal analysis to determine its sufficiency; petition is sufficient to confer jurisdiction upon the board of trustees if it clearly indicates the desire of a majority of the school electors residing in the proposed new district for segregation, and describes its boundaries. State ex rel. Hall v. Peterson, 55 M 355, 177 P 245.

Requirements of the statute as to what a petition for the creation of a new school district shall contain are jurisdictional; they must be made to appear in the petition or proven as matter of evidence; omission to do either is fatal. School District No. 28 v. Larson, 80 M 363, 369, 260 P 1042.

Right of Appeal

Since an order of the board of county commissioners in the matter of setting aside an order of the county superintendent of schools creating a school district, is final and no appeal lies to either school authorities or courts, equity will take jurisdiction of an action to right any wrong committed by the board. Grant v. Michaels, 94 M 452, 459, 23 P 2d 266.

An appeal lies from an order creating a joint school district to the boards of county commissioners of such counties, and the effect thereof is simply to suspend or delay the effective creation of the district, and not to vacate the order of creation; if, on appeal, opinion is equally divided between the boards of county commissioners, one board favoring creation and the other opposed thereto, the order of creation by the county school superintendents stands affirmed. State ex rel. School District No. 8 v. Lensman, 108 M 118, 88 P 2d 63.

Collateral References

Schools and School Districts 31 et seq. 78 C.J.S. Schools and School Districts 36 et seq.

75-6519. Methods of changing high school district boundaries. The trustees of any high school district, except the trustees of a high school located in a county which has not been divided into high school districts or become a high school district by county high school unification, may request a change of the high school boundaries of their district or county as provided by this section.

Whenever the trustees of a high school district shall pass a resolution requesting the change of their district's boundary or the redivision of the county into high school districts, they shall send such resolution to the county superintendent. When the trustees request a boundary change of their district or a redivision of the county into high school districts, they shall describe the requested boundary change or redivision and give the reasons therefor. A requested boundary change of a district shall conform to one of the following types:

- (1) consolidation of high school districts shall be the merging of two (2) or more high school districts to form a single high school district;
- (2) annexation shall be the attachment of all the territory of a high school district to another high school district or districts;
- (3) transfer of territory shall be the detachment of territory from a high school district and the attachment of such territory to another high school district or districts; or
- (4) creation of a new high school district shall be the formation of a new high school district from the territory presently incorporated in the requesting high school district.

Whenever the trustees of any high school district request a boundary change or a redivision that would create a joint high school district or, in any way, affect the boundary of an existing joint high school district, they shall send the boundary change resolution to the county superintendent of each county that would be affected by such boundary change.

History: En. 75-6519 by Sec. 178, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 32.
78 C.J.S. Schools and School Districts 32.
47 Am. Jur. 310-313, Schools, §§ 18-22.

75-6520. Establishment of high school districts in a county. The trustees of a high school district located in a county, which has not been divided into high school districts or become a high school district by county high school unification, may request the division of the county into a high school district or districts. The request shall be sent to the county superintendent.

History: En. 75-6520 by Sec. 179, Ch. 5, L. 1971; amd. Sec. 1, Ch. 44, L. 1971.

Collateral References

Schools and School Districts 23.
78 C.J.S. Schools and School Districts
27.
47 Am. Jur. 309, Schools, § 17.

75-6521. High school boundary commission and boundary change, division or redivision hearing procedure. Each county of the state of Montana shall have a high school boundary commission consisting of the board of county commissioners and the county superintendent. Whenever a county superintendent receives a resolution from the trustees of any high school district requesting a boundary change or a request to divide or redivide the county into high school districts, he shall immediately notify the high school boundary commission. Such commission shall set a time, date, and place for a public hearing on the request. The hearing shall be set for a date within sixty (60) days after the receipt of the request and any interested person may appear and be heard on such request. The county superintendent shall send a written notice of the public hearing on a requested boundary change, division, or redivision to the trustees of each elementary and high school district of the county which has territory that would be affected by the change. The county superintendent shall also give notice of such public hearing in accordance with the requirement for school election notices prescribed by school election provisions of this

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Title. The certificate of the county superintendent filed with the high school boundary commission reciting that such notice requirements have been satisfied shall be conclusive.

In considering a request to change high school district boundaries or to divide or redivide the county into high school districts, the high school boundary commission shall give primary consideration to the convenience of the high school pupils of the territory under consideration. Such commission also shall consider the grouping of elementary districts to be encompassed by a high school district or districts, and shall group contiguous elementary districts within a high school district unless obstacles of travel such as mountains, rivers, impractical routes of travel, or distance make such grouping impractical. After the hearing, the high school boundary commission may grant or deny any request, made under the provisions of section 75-6519, for a high school district boundary change, but shall order the division of the county into high school districts whenever requested under the provisions of section 75-6520. In the latter case the commission's discretion shall extend only to the establishing of boundaries for the newly created high school district or districts.

History: En. 75-6521 by Sec. 180, Ch. 5, L. 1971.

Cross-Reference

Voluntary consolidation and annexation incentive plan, sec. 75-6540 et seq.

Collateral References

Schools and School Districts 37.

78 C.J.S. Schools and School Districts 36 et seq.

47 Am. Jur. 313, Schools, § 23.

75-6522. Approval of high school district boundary when elementary district territory divided by commission. If the order of a high school boundary commission would divide the territory of any elementary district between two (2) or more high school districts or would divide the territory of a joint elementary district which is located within the county between high school districts, the county superintendent shall, under the provisions of section 75-6406, order the trustees of such elementary district to call an election. The election shall be called and conducted in the manner prescribed in this Title for school elections. An elector who may vote on the proposition shall be qualified under the provisions of section 75-6410. If the election is required because of the division of the territory of a joint elementary district located in the county, the electors shall be residents of such territory. If a majority of the electors voting at such election approve the division of the elementary district or the county's territory in a joint elementary district, the order of the high school boundary commission shall be approved. If a majority of the electors voting at such election do not approve such division, the high school boundary commission shall reconsider its action and shall establish different high school boundary lines, subject to the same limitations herein described.

History: En. 75-6522 by Sec. 181, Ch. 5, L. 1971.

75-6523. Counter-proposed high school district boundaries by electors and election. Whenever a high school boundary commission issues an order to change high school district boundary lines, twenty per cent

(20%) or more of the electors of any elementary district with territory affected by the high school boundary change who are qualified to vote under the provisions of section 75-6410 may protest the boundaries established by the order of the commission within thirty (30) days after the date of such order. Such protest shall be in the form of a petition addressed to the county superintendent and it shall provide a counter-proposition to the new high school boundaries established by the order of the commission for the disposition of the territory of the elementary district for high school districting purposes. The provisions of this section shall not be used in elementary districts that have approved high school boundaries under the provisions of section 75-6522.

When the county superintendent receives a valid petition from an elementary district, he shall, within ten (10) days after the receipt of such petition, and as provided by section 75-6423, order the trustees of such elementary district to call an election to consider the high school boundary counter proposition described in such petition. The trustees shall call and conduct the election in the manner prescribed in this Title for school elections. An elector who may vote on the proposition shall be qualified to vote under the provisions of section 75-6410. If a majority of the electors voting at the election approve the counter-proposition, the high school boundaries described by the counter-proposition shall be amended to establish such high school boundaries. If a majority of the electors voting at such election disapprove the counter-proposition, the order of the high school boundary commission shall be confirmed and shall be final.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971.

75-6524. High school district abandonment. Within six (6) months after a high school district fails to operate an accredited high school within its boundaries for a period of one (1) year, the county superintendent shall order the high school district abandoned. At least twenty (20) days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent also shall order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county.

History: En. 75-6524 by Sec. 183, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts §§ 27, 59.
47 Am. Jur. 309, Schools, § 17.

Collateral References

Schools and School Districts@36, 44.

75-6525. Limitations for organization of joint high school district. The boundaries of any high school district which encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. Such high school district boundary change shall be a transfer of all the territory

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located in another county's portion of the same joint elementary district. No such boundary change shall be made when:

- (1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than seven hundred fifty thousand dollars (\$750,000); or
- (2) a portion of the territory to be transferred is less than three (3) miles from an operating, accredited high school located in another high school district.

History: En. 75-6525 by Sec. 184, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 33.
78 C.J.S. Schools and School Districts \$\\$57, 58.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts, 121 ALR 826.

- 75-6526. Procedure for organization of joint high school district. The high school district boundary changes permitted under section 75-6525 shall be made according to the following procedure:
- (1) A majority of the electors of a joint elementary district who are qualified to vote under the provisions of section 75-6410 and who reside in a county where the elementary school is not located may petition the county superintendent of their resident county to transfer the territory of the joint elementary district where they reside to establish a joint high school district. Such petition also shall state the reasons for requesting such a boundary change and the number of high school pupils residing in the territory.
- (2) When the county superintendent receives a valid petition requesting the establishment of a joint high school district, he shall set a time, date, and place for a public hearing on the request which is not more than forty (40) days after the receipt of the petition. He shall give notice of such hearing in accordance with the election requirements for school election notices prescribed by school election provisions of this Title. The county superintendent shall also notify the county superintendent of the county where the high school is located and the trustees of the high school district.
- (3) The county superintendent shall hear the request to change the high school district boundaries at the place, time, and date set for the hearing, and any interested person may appear and be heard on the request. If the county superintendent deems it advisable and in the best interests of the residents of the territory to be transferred, he shall grant the petitioned request and order the change of high school boundaries to establish a joint high school district. Otherwise, he shall, by order, deny the request.
- (4) If the county superintendent orders the establishment of a joint high school district, he shall immediately send the order to the county superintendent of the county where the high school is located. If the county superintendent of such county approves the order, he shall send such order to the trustees of the high school district. If the trustees approve the order,

the boundary change shall become effective. Without the approval of such county superintendent and trustees, the boundary change shall fail.

(5) At any time within thirty (30) days after the date of the county superintendent's order to grant or deny the request to establish a joint high school district, an appeal may be made to the board of county commissioners of the county in which the petition originated. The board of county commissioners shall conduct a hearing for the appeal, and their decision shall be final, subject to the approvals required by subsection (4).

History: En. 75-6526 by Sec. 185, Ch. 5, L. 1971.

75-6527. High school district consolidation by board of county commissioners. The board of county commissioners of any county shall have the authority to consolidate any two or more high school districts of the county whenever it appears to them that it would be for the best interest of the pupils and other residents of the districts and the county. The board of county commissioners shall have complete responsibility and authority to determine all questions involved in effecting the consolidation of the high school districts, except that before it shall become effective any such boundary change shall be approved by the superintendent of public instruction

History: En. 75-6527 by Sec. 186, Ch. 5, L. 1971.

Arbitrary Action

Legislature never intended to confer upon the board of county commissioners the arbitrary power of consolidating county high schools without notice to anyone affected thereby, and without making any provision for the disposition of the property of the school which is discontinued. Box v. Duncan, 98 M 216, 38 P 2d 986.

Date of Consolidation

Former section declaring that no school district should be created or boundaries

thereof changed between March 1 and July 1 of any calendar year was not impliedly repealed by act authorizing high school consolidation; action of commissioners in consolidating high schools in March, thereby creating new district at least for high school purposes, was void. Box v. Duncan, 98 M 216, 38 P 2d 986.

Collateral References

Schools and School Districts 33. 78 C.J.S. Schools and School Districts 57.

DECISIONS UNDER FORMER LAW

Consolidation of High Schools

Under Ch. 47, Ex. Laws 1933 (sections 1301.1 to 1301.6, R. C. M. 1935, since repealed), a school district maintaining only a two-year high school course might properly be consolidated with a district main-

taining a complete course; the act was constitutional. Pierson v. Hendricksen, 98 M 244, 253, 38 P 2d 991; State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P 2d 264.

75-6528. High school district boundary approval by superintendent of public instruction. Whenever a high school boundary commission orders changes in high school district boundaries or a division or redivision of the county under the provisions of this Title, its order shall not be final until it has been approved by the superintendent of public instruction. The superintendent of public instruction shall not approve any high school boundary commission order that:

- (1) is dated less than one (1) year since the last high school boundary commission order was approved for such county;
- (2) has not been confirmed by the high school boundary commission of each county affected by the boundary change when it involves a joint high school district; or
- (3) does not provide for the high school district boundaries approved by the electors of an elementary district under the provisions of sections 75-6522 or 75-6523.

History: En. 75-6528 by Sec. 187, Ch. 5, L. 1971.

75-6529. Bonded indebtedness against original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this Title, the existing bonded indebtedness against any district or territory affected by a change of boundaries shall remain the indebtedness of the original territory against which such bonds were issued and shall be paid by levies on the original territory; except when elementary districts are consolidated with the mutual assumption of bonded indebtedness or when an elementary district is annexed with a joint assumption of the annexing district's bonded indebtedness with the annexing district. Any moneys to the credit of the debt service fund of a district when its boundaries are changed shall be used to pay the existing bond principal and interest of the original territory issuing such bonds as it becomes due or for bond redemption under the bonding provisions of this Title.

History: En. 75-6529 by Sec. 188, Ch. 5, L. 1971.

47 Am. Jur. 312, Schools, § 21.

Collateral References

Schools and School Districts 41(2). 78 C.J.S. Schools and School Districts 74.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

75-6530. Property tax valuation after district boundary change. The property tax valuation used under the provisions of section 75-6717 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the second Monday in August shall include the property tax valuation of any territory added to the district by such boundary change, or exclude the property tax valuation of any territory detached from the district by such boundary change.

History: En. 75-6530 by Sec. 189, Ch. 5, L. 1971.

75-6531. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, joint district dissolution, territory transfer, or any other method of changing district boundaries except by the consolidation of elementary districts or by the creation of a new elementary district shall continue to be the trustees of such district with the

same powers, duties, and responsibilities and subject to the same limitations provided by law, as if there had been no boundary change. In the case of elementary district consolidation or the creation of a new elementary district, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of section 75-6506 or section 75-6517, whichever is applicable.

History: En. 75-6531 by Sec. 190, Ch. 5, L. 1971.

- 75-6532. Cash disposition when district ceases to exist. Whenever a district shall cease to exist in any manner prescribed in this Title except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:
- (1) Any cash to the credit of the district shall be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund shall be used first to pay bond interest and all outstanding bonds.
- (2) If any cash remains to the credit of the district after paying its debts, the cash shall be transferred by the county treasurer to the credit of the district or districts assuming its territory.

When the territory is assumed by more than one district, the remaining cash shall be prorated between the districts on the basis of the number of census children residing within the territory assumed by each district as determined by the county superintendent.

(3) If any debts, other than bonded indebtedness remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1) above, the debts shall be assigned in the same manner prescribed for the transfer of cash under subsection (2) above.

History: En. 75-6532 by Sec. 191, Ch. 5, T. 1971.

Collateral References

Schools and School Districts \$\infty\$ 41(1, 3). 78 C.J.S. Schools and School Districts 76. 47 Am. Jur. 313, Schools, § 22.

75-6533. Cash disposition when districts consolidated. Whenever two (2) or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, shall be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition when two (2) or more elementary districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded indebtedness also shall be transferred to a similar fund of the consolidated district.

History: En. 75-6533 by Sec. 192, Ch. 5, L. 1971.

75-6534. Cash disposition when new elementary district created. Whenever a new district is created, under the provisions of section 75-6518,

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the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school census children residing in the new district is of the total number of school census children residing in the old district before the creation of the new district. After the new district has operated a school for one (1) month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971.

75-6535. No cash disposition when territory transferred. Whenever only a portion of the territory of one district is transferred to another district, all cash and debts, other than bonded indebtedness, shall be retained by the district originally realizing the cash or debt.

History: En. 75-6535 by Sec. 194, Ch. 5, L. 1971.

75-6536. Property disposition when district boundaries changed. Whenever district boundaries are changed, title to the real and personal property of the districts involved in such boundary change shall vest in the district which encompasses the territory where such real or personal property was located at the time the legal procedure to authorize the boundary change was introduced. The disposition or utilization of such property will be in the discretion of the trustees of the district encompassing the territory of its location, as provided by law.

History: En. 75-6536 by Sec. 195, Ch. 5, L. 1971.

75-6537. Surrender of records when district ceases to exist. Within ten (10) days after any district ceases to exist, the trustees shall surrender all minutes, documents, and other records of the district to the trustees of the district assuming its territory or, if more than one (1) district assumes its territory, to the county superintendent.

History: En. 75-6537 by Sec. 196, Ch. 5, L. 1971.

Division of Property

Upon creation of a new school district out of an old one a division of its property and funds should be made as of the date on which it was created, with each district to hold and own all permanent property, such as sites, schoolhouses and furniture situated within its boundaries. Weasel Head v. Armstrong, 99 M 364, 371, 43 P 2d 243.

75-6538. County high school unification. Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. If the county has not been divided into high school districts, a

high school district with boundaries coterminous with the county boundaries shall be created, except that such high school district shall not include the territory of any existing joint high school district located in the county. The territory of an existing joint high school district shall remain a part of such joint high school district. The creation of high school districts under this provision shall be in lieu of the high school district division provisions of section 75-6520.

A proposition to unify a county high school with the elementary district where the county high school building is located shall be introduced whenever:

- (1) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or
- (2) not less than twenty per cent (20%) of the electors of the county or, if the county has been divided into high school districts, the electors of the high school district where the county high school is located, and who are qualified to vote under the provisions of section 75-6410, petition the county superintendent to order an election to consider a unification proposition.

When the county superintendent has received the trustees' resolutions or a valid petition, he shall, within ten (10) days after the receipt of the last resolution or petition and under the provisions of section 75-6406, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition shall be qualified to vote under the provisions of section 75-6410. The ballot for a county high school unification proposition shall be substantially in the following form:

OFFICIAL BALLOT

COUNTY HIGH SCHOOL UNIFICATION ELECTION

Sha	ll County High School be unified with District No.
unified	board of trustees?
	FOR the unification of the county high school.
	AGAINST the unification of the county high school.

When the county superintendent receives the election certificate from the trustees of the county high school, he shall issue an order declaring the unification of the county high school with the elementary district identified on the ballot as of the next succeeding July 1, if a majority of those electors voting at such election have voted for the unification proposition.

If a majority of those electors voting at the election have voted against the unification proposition, he shall order the disapproval of the unification proposition. 75-6539 SCHOOLS

History: En. 75-6538 by Sec. 197, Ch. 5, L. 1971.

Collateral References
Schools and School Districts € 11, 24.
78 C.J.S. Schools and School Districts

§§ 13, 27.

75-6539. Transactions after approved county high school unification. Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions shall be completed on or before the first of July when the unification becomes effective:

- (1) The high school boundary commission, without the approval of the superintendent of public instruction, shall order the creation of a high school district if the county has not already been divided into high school districts.
- (2) The county high school trustees, who shall not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents and other records of the county high school to the trustees of the high school district.
- (3) The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in sections 75-5903 and 75-5904, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes such areas, he shall appoint additional high school district trustees from each area who shall hold office until a successor is elected at the next regular school election and qualified.
- (4) The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school shall be credited to the appropriate fund of the high school district.
- (5) The board of county commissioners shall execute, in the name of the county, all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to all real and personal property of the county high school, including all appurtenances and hereditaments, to the high school district.

All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district shall be responsible for the maintenance of the debt service fund for such bonds. It shall be the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of the county high school bonds in the same manner and by the same means as though the county high school had not been unified.

History: En. 75-6539 by Sec. 198, Ch. 5, L. 1971.

Collateral References
Schools and School Districts 11, 17.
8 C.J.S. Schools and School Districts

§§ 13, 18.

Unionization, centralization, or consolidation of school districts as affecting indistricts. 121 ALR 826.

75-6540. Voluntary consolidation and annexation incentive plan—purpose. This act shall be known as the voluntary consolidation and annexation incentive plan. The purpose of this plan is to provide additional financial assistance to school districts that consolidate or annex under the provisions of sections 75-6506, 75-6508, or 75-6511, for elementary school districts or section 75-6521, for high school districts.

History: En. Sec. 1, Ch. 125, L. 1971.

Collateral References

Schools and School Districts \$33. 78 C.J.S. Schools and School Districts § 57.

75-6541. Incentive plan—definitions. As used in this act, unless the context clearly indicates otherwise:

"enlarged district" is the elementary or high school district resulting from the consolidation or annexation of two or more component districts;

"component districts" are the elementary or high school districts incorporated into the enlarged district;

"eligible pupils" shall be: the average number belonging for the current school year in the operating schools of the component districts and the tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws; except that the pupils residing in the component district having the largest total number of pupils shall be ineligible for bonus payment consideration:

"general bonus payment" shall be one hundred dollars (\$100) per eligible pupil per year for a period of three (3) years and will be deposited in the enlarged district's general fund. Such payment shall be made from the state school equalization aid account;

"transportation bonus payment" will be the provision of sixty-six and two-thirds per cent (66 2/3%) state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district shall be entitled to the transportation bonus payment for such eligible pupil for a period of three (3) years. Such payment shall be made from the state transportation aid account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the sixty-six and two-thirds per cent (66 2/3%) state financing of the on-schedule amount for this payment shall be prorated to provide such financing for the eligible pupil.

History: En. Sec. 2, Ch. 125, L. 1971.

75-6542. Incentive plan—authority and time for application for bonus payment. Whenever two (2) or more elementary school districts consolidate or annex under the provisions of sections 75-6506, 75-6508, or 75-6511, or two (2) or more high school districts consolidate under the provisions of section 75-6521, the enlarged district may make application

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for the bonus payment as provided herein if such consolidation or annexation shall result in the dissolution of at least one (1) elementary or high school district. Application for the bonus payments must be made during the school year of the order creating the enlarged school district.

History: En. Sec. 3, Ch. 125, L. 1971.

75-6543. Incentive plan—application to superintendent of public instruction—contents. Application for the bonus payments shall be made to the superintendent of public instruction and shall include a copy of the order issued by the proper officials creating such enlarged school district, the number of eligible pupils as defined herein, and any other information the superintendent of public instruction may deem necessary.

History: En. Sec. 4, Ch. 125, L. 1971.

75-6544. Incentive plan—duties of superintendent of public instruction on approval or disapproval of application. The superintendent of public instruction shall approve only those applications which demonstrate compliance with the requirements of this act. When an application is approved, the superintendent of public instruction shall determine the number of eligible pupils for the bonus payments. He shall notify the enlarged district's board of trustees and the county superintendent(s) of the disapproval of the application or of the approval of the application establishing the number of eligible pupils.

History: En. Sec. 5, Ch. 125, L. 1971.

75-6545. Incentive plan—disbursal and deposit of bonus payments. On or before June 30 of the next three (3) consecutive years following the year of application, the superintendent of public instruction shall disburse the bonus payments for approved applications to the enlarged school district. The general bonus payment shall be deposited by the county treasurer in the enlarged district's general fund and the transportation bonus payment shall be deposited by the county treasurer in the transportation fund. These bonus payments shall not be considered as a part of the regular state equalization aid or state transportation aid received by the enlarged district.

History: En. Sec. 6, Ch. 125, L. 1971.

75-6546. Incentive plan—effect of reduction in territory. Any reduction in the amount of territory encompassed in the enlarged school district's territory during the three-year period of bonus payments shall establish an ineligibility of the enlarged district to receive any remaining bonus payments under this act.

History: En. Sec. 7, Ch. 125, L. 1971.

75-6547. Incentive plan—effect of addition of component districts. The subsequent addition of other component districts to the enlarged district shall entitle such enlarged district to additional bonus payments under the provisions of this act.

History: En. Sec. 8, Ch. 125, L. 1971.

CHAPTER 66

OPENING AND CLOSING OF SCHOOLS

Section 75-6601. Definition of various schools.

75-6602. Opening or reopening of elementary school. 75-6603. Opening or reopening of a high school. 75-6604. Opening of a junior high school.

75-6605. Opening a junior high school when high school district operates a county high school.

75-6606. Budgeting and cost-sharing when junior high school operated by elementary district and high school district operating a county high school.

75-6607. School closure.

75-6608. School isolation.

75-6601. Definition of various schools. As used in this Title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense.

The trustees of any district shall designate the grade assignments for the schools of the district but for the purposes of this Title each school shall be known as:

- (1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs or the first eight (8) grades, or their equivalents, except when an accredited junior high school or an accredited six-year high school is operated by the district, grades seven (7) and eight (8), or their equivalents, shall not be considered as elementary grades; or
- a high school when it comprises the work of one (1) or more grades of school work, or their equivalents, intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:
- a junior high school is a school comprising the work of grades seven (7) through nine (9), or their equivalents, that has been accredited as a junior high school under the provisions of section 75-7502;
- (b) a senior high school is a school which comprises the work of grades ten (10) through twelve (12), or their equivalents, and which is operated in conjunction with a junior high school;
- a six-year high school is a school comprising the work of grades seven (7) through twelve (12), or their equivalents, that has been accredited as a six-year high school under the provisions of section 75-7502;
- (d) a four-year high school is a school comprising the work of grades nine (9) through twelve (12), or their equivalents;
- (e) a county high school is a four-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901 and any subsequent amendments thereto; or
- (f) a post-secondary vocational-technical center established under the provisions of section 75-7707.

Unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school 75-6602 SCHOOLS

district operating such high school may organize the schools of their districts to form a kindergarten through grade twelve (12) school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971.

ance with the following procedure:

Collateral References
78 C.J.S. Schools and School Districts
1.
47 Am. Jur. 297, Schools, § 2.

75-6602. Opening or reopening of elementary school. The trustees of any elementary district may open or reopen an elementary school of the district when such opening or reopening has been approved in accord-

- (1) The parents of at least three (3) pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school during the ensuing school fiscal year. Such petition shall identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend such school.
- (2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of such school would be five (5) or more.
- (3) The county superintendent shall present the petition, trustees' approval, and his findings on the probable ANB to the board of county commissioners (budget board) for their consideration. The budget board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for such school is less than five (5) ANB. In all other cases, the budget board may approve or disapprove the requested opening or reopening of the elementary school.
- (4) If the budget board approves a school opening or reopening, the county superintendent shall send a copy of such approval, along with the petition, trustees' approval, and his estimate of the probable ANB to the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for such school and such ANB amount shall be used for budgeting and foundation program purposes during the ensuing school fiscal year. No ANB amount shall be approved for the ensuing school fiscal year for an opening or reopening school when the request for such school has not been received by the superintendent of public instruction before the fourth Monday of June.

History: En. 75-6602 by Sec. 200, Ch. 5, L. 1971.

Collateral References
Schools and School Districts 9-11.
78 C.J.S. Schools and School Districts
§ 13.

75-6603. Opening or reopening of a high school. The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when such opening or reopening has been approved by the superintendent of public instruction; except when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen such school by the first day of June before the school fiscal year in which they intend to open or reopen the high school. Such application shall:

- (1) state their reasons why the high school should be opened or reopened;
 - (2) the probable enrollment of such high school;
- (3) the distance and road conditions of the route to neighboring high schools;
 - (4) the taxable value of the district;
- (5) the building and equipment facilities available for such high school;
 - (6) the planned course of instruction for such high school;
- (7) the planned methods of complying with high school standards of accreditation; and
- (8) any other information that may be required by the superintendent of public instruction.

The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open such high school.

Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall be used for budgeting and foundation program purposes.

Nothing herein contained shall be construed so as to preclude the trustees of a high school district from establishing more than one (1) high school in the district.

History: En. 75-6603 by Sec. 201, Ch. 5, L. 1971.

Cross-Reference

Standards of accreditation adopted by board of education, sec. 75-7501.

75-6604. Opening of a junior high school. The trustees of any elementary district and the trustees of the high school district in which such elementary district is located may open a junior high school when such opening has been approved by the superintendent of public instruction; except that when the high school district operates a county high school, the open-

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ing of a junior high school shall be approved under the provisions of section 75-6605.

When the trustees of such districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for approval to open such school by the first day of June before the school fiscal year in which they intend to open the junior high school. The application shall contain such information as is required under section 75-6603 for an application to open a high school.

The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open such school.

Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

History: En. 75-6604 by Sec. 202, Ch. 5, L. 1971.

Collateral References
Schools and School Districts 11.
78 C.J.S. Schools and School Districts

75-6605. Opening a junior high school when high school district operates a county high school. Whenever the trustees of an elementary district and a high school district operating a county high school have formed a joint board of trustees under the provisions of section 75-5928, such joint board of trustees may open a junior high school under the provisions of this section.

When the joint board of trustees resolve to open a junior high school, they shall order an election under the provisions of section 75-6406 to submit a proposition to the electors of the district to approve or disapprove the trustees resolution to open a junior high school. The joint board of trustees shall call and conduct the election in the manner prescribed in this title for school elections and equally share the cost of the election. Any elector qualified to vote under the provisions of section 75-6410 may vote on the proposition. If a majority of the electors voting at the election approve the proposition, the trustees shall apply to the superintendent of public instruction for approval to open a junior high school. If a majority of the electors voting at the election disapprove the proposition, a junior high school shall not be opened by the joint board of trustees.

The application to the superintendent of public instruction for the approval to open a junior high school shall be submitted by the first day of June following the election approving the opening of the junior high school. The application shall contain such information as is required under section 75-6603 for an application to open a high school.

The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the joint board of trustees may open the junior high school.

At any time the trustees of the elementary district and the trustees of the high school district shall cease to form a joint board of trustees under the provisions of section 75-5928, the junior high school shall be closed and the districts shall assume the provision of an educational program for the junior high school pupils of their respective districts.

History: En. 75-6605 by Sec. 203, Ch. 5, L. 1971.

75-6606. Budgeting and cost-sharing when junior high school operated by elementary district and high school district operating a county high school. Whenever the opening of a junior high school is approved for the ensuing school fiscal year under the provisions of section 75-6605, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years shall be applied under the provisions of subsection (10) of section 75-6905 to prorate the maximum-general-fund-budget-without-a-voted-levy between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of such prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

The cost of operating the junior high school shall be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

History: En. 75-6606 by Sec. 204, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 110. 79 C.J.S. Schools and School Districts § 411.

47 Am. Jur. 361, Schools, § 90.

Attendance: determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds. 80 ALR 2d 953.

75-6607. School closure. When it is in the best interest of the pupils affected, the trustees of any district shall have the power and authority to close any school of the district, except that the closure of a junior high school shall be closed jointly by the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this Title.

History: En. 75-6607 by Sec. 205, Ch. 5, Cross-Reference L. 1971.

Mandamus

The matter of maintaining or closing of any particular school or schools, being addressed to the discretion of the board, cannot be controlled by mandamus. State ex rel. Robinson v. Desonia, 67 M 201, 203, 215 P 220.

Collateral References

Schools and School Districts €== 11.
78 C.J.S. Schools and School Districts § 13.

75-6608. School isolation. The trustees of any district operating an elementary school of less than ten (10) ANB or a high school of less than twenty-five (25) ANB shall apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by the first day of May each year. Such application shall include:

- (1) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway; and
- (2) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of such school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and
- (3) any other information prescribed by the superintendent of public instruction.

The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before the fifteenth (15th) day of June. The budget board shall approve or disapprove the application on the basis of the existence of unusual obstacles to travel or the unusual distance to the nearest open school having room and facilities for the pupils of such school. The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

When an application is approved because of conditions other than obstacles to travel or the unusual distance to the nearest open school having available room, the county superintendent shall review such application and approve or disapprove it. If the county superintendent approves the isolated classification, he shall send the application indicating his approval and the budget board's approval to the superintendent of public instruction before the fourth Monday of June. The superintendent of public instruction shall approve or disapprove such application for isolated classification.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971.

CHAPTER 67

BUDGET SYSTEM

Section 75-6701. Application of budget system for districts.
75-6702. General supervision of school budgeting system.

75-6703. Board of school budget supervisors.

75-6704. School budget form.

75-6705. Initial budget items for completion and estimated budgeting authority.

75-6706.

Notice of preliminary budget meeting. Preparation and adoption of preliminary budget by trustees. 75-6707. 75-6708. Preparation of preliminary budget by county superintendent if no budget submitted.

75-6709. Notice of preliminary budget filing and final budget meeting.

County treasurer's statement of cash balances and bond information. 75-6710. County assessor's [statement] of district, cities and towns valuations. County superintendent['s] estimates of revenue and supply of other financial and statistical information. 75-6711. 75-6712.

75-6713. Final budget meeting.

Final budget adjustment procedures.

75-6715. General fund budget adjustment when budget exceeds maximum limitation.

75-6716. Adoption and expenditure limitations of final budget.

75-6717. Fixing and levying tax levies by board of county commissioners.

Allocation of federal funds in lieu of property taxation. 75-6718.

75-6719. Completion, filing and delivery of final budgets.

75-6720. Designation of county officials for joint district budgeting.
75-6721. Budgeting procedure for joint districts and establishment of communication procedure.

75-6722. Fixing and levying tax levies for joint districts. 75-6723. Definition of emergency for budgeting purposes.

Authorization for emergency budget adoption.

Resolution for emergency budget and, under certain circumstances, petition of superintendent of public instruction. 75-6725.

Notice of emergency budget resolution. 75-6726.

Emergency budget limitation, preparation and adoption procedures. 75-6727.

75-6728. Filing and delivery of adopted emergency budget.
75-6729. State financial aid for emergency budgets.
75-6730. Determination of available financing and fixing and levying property taxation for an emergency budget.

75-6701. Application of budget system for districts. The school budget eting procedure and provisions of this Title shall apply to elementary, high school and community college districts, and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this Title.

History: En. 75-6701 by Sec. 207, Ch. 5, L. 1971.

Cross-References

Fiscal year, sec. 59-701. General fund budget, amount and financing, sec. 75-6901.

Collateral References

Schools and School Districts 93. 79 C.J.S. Schools and School Districts 8 343.

75-6702. General supervision of school budgeting system. The superintendent of public instruction shall have general supervision over the school budgeting procedure and provisions prescribed by law and shall have the duty to establish such regulations as are necessary to secure compliance with the school budgeting laws.

History: En. 75-6702 by Sec. 208, Ch. 5, L. 1971.

75-6703. Board of school budget supervisors. There shall be a board of school budget supervisors in each county of the state. The board of county commissioners shall constitute such board and in that capacity 75-6704 SCHOOLS

shall exercise the powers and duties prescribed by law. The clerk of the board of school budget supervisors shall be the county superintendent whose office shall be the office of such board.

As used in this Title, unless the context clearly indicates otherwise, the term "budget board" means the board of school budget supervisors of a county.

History: En. 75-6703 by Sec. 209, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$\infty\$=48.

78 C.J.S. Schools and School Districts
92.

75-6704. School budget form. The format of the school budget form shall be prescribed by the superintendent of public instruction and shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this Title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

Each district shall use the budget forms prescribed by the superintendent of public instruction except that a district may, with the approval of the superintendent of public instruction, use a more detailed form.

History: En. 75-6704 by Sec. 210, Ch. 5, L. 1971.

75-6705. Initial budget items for completion and estimated budgeting authority. During the month of March, the county superintendent shall complete the portions of the budget form providing information about the last completed school year and, separate from the budget form, estimate the maximum amount to be available for the general fund budget in the ensuing year without an additional levy. By the tenth day of April, the county superintendent shall send to each district two (2) copies of the budget form, the general fund estimate, and any other information or data as may be required by the superintendent of public instruction or that the county superintendent may deem necessary.

Upon receipt of the budget forms, the district shall complete those portions of them which require information about the then current school year.

History: En. 75-6705 by Sec. 211, Ch. 5, L. 1971.

75-6706. Notice of preliminary budget meeting. During the month of May, the county superintendent shall publish a notice at least one (1) time in the official newspaper of the county stating that the trustees of each district in the county will meet in regular session on the fourth Monday in June to prepare and adopt a preliminary budget for the next ensuing school fiscal year and that any taxpayer in the district may attend such meeting and be heard on such preliminary budget.

History: En. 75-6706 by Sec. 212, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 5343. Schools and School Districts 343.

75-6707. Preparation and adoption of preliminary budget by trustees. The trustees of each district shall meet at their regular place of meeting on the fourth Monday in June to adopt a preliminary budget for the next ensuing school fiscal year. This budget meeting may be continued from day to day but shall not exceed five (5) days in total. Any taxpayer in the district may attend such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included in such budget. The preliminary budget shall include all funds which require the adoption of a budget and which the trustees wish to utilize during the ensuing year.

The proposed expenditures adopted as the preliminary budget shall be entered on the appropriate portion of the budget form. The amount of the preliminary general fund budget for a district shall not exceed the foundation program of such district except in the manner permitted by the laws of Montana. If any appropriation item of the preliminary budget provides for the payment of wages or salaries to more than one (1) person, the district shall attach to the preliminary budget a separate listing of each position of employment with the budgeted amount of compensation for each position.

After the adoption of the preliminary budget by the trustees, the chairman of the trustees and the clerk of the district shall sign the budget form and it shall constitute the preliminary budget for the district. The trustees shall send both copies of the adopted preliminary budget with all appendages and any other information required by law to the county superintendent on or before the fifth day after the fourth Monday of June.

History: En. 75-6707 by Sec. 213, Ch. 5, L. 1971.

Cross-References

Adult education program, budgeting of cost, sec. 75-7207.

Building reserve, inclusion in budget, sec. 75-7206.

Debt service fund, inclusion of amounts for payment of bonds, sec. 75-7127.

Nonoperating school district budget, sec. 75-7210.

Post-secondary vocational-technical center fund, inclusion in budget not required, sec. 75-7208.

Tuition paid by elementary pupils, inclusion in tuition fund, sec. 75-7203.

75-6708. Preparation of preliminary budget by county superintendent if no budget submitted. If for any reason the trustees of any district fail to prepare and submit a preliminary budget to the county superintendent before the tenth day of July, the county superintendent shall prepare a preliminary budget for the district in the manner provided by law and shall note on the budget form the specific reasons why he has prepared it. For all purposes thereafter, such preliminary budget shall be considered to have been adopted by the trustees of the district in the regular manner.

History: En. 75-6708 by Sec. 214, Ch. 5, L. 1971.

75-6709. Notice of preliminary budget filing and final budget meeting. Between the tenth and twentieth days of July of each year, the county superintendent shall publish notice one (1) time in the official newspaper of the county stating that the preliminary budgets for all districts in the county for the school fiscal year just beginning, as prepared and adopted

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by the respective trustees, are on file in his office and that such budgets are open to inspection of all taxpayers. The notice shall also state that the board of school budget supervisors of the county will meet at 10 a.m. on the fourth Monday in July for the purpose of considering and adopting the final budget of each district, that the meeting of such budget board may be continued from day to day until the final adoption of all the districts' budgets, and that any taxpayer in a district may appear at such budget board meeting and be heard for or against any part of the budget of his district.

History: En. 75-6709 by Sec. 215, Ch. 5, L. 1971.

75-6710. County treasurer's statement of cash balances and bond information. By the tenth day of July, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district and the amount of the outstanding obligations against each fund at the close of the last completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information shall be prescribed by the superintendent of public instruction.

By the tenth day of July, the county treasurer shall prepare a statement for each county school fund supported by county-wide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement shall be prescribed by the superintendent of public instruction.

On or before the tenth day of July, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent who shall attach such district statements to the applicable district's preliminary budget.

History: En. 75-6710 by Sec. 216, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$2(3).
79 C.J.S. Schools and School Districts \$345.

75-6711. County assessor's [statement] of district, cities and towns valuations. By the second Monday of July, the county assessor of each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of section 84-505, R. C. M., 1947, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities or towns, as these valuations appear in such completed assessment book.

The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the county assessor

under the provisions of section 84-4006, R. C. M., 1947, prepare a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county boards of equalization and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

In the case of a joint school district, the county assessor and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 4, L. 1971.

Collateral References

Schools and School Districts \$\sim 101, 103 (4).
79 C.J.S. Schools and School Districts § 385.

75-6712. County superintendent ['s] estimates of revenue and supply of other financial and statistical information. Before the fourth Monday of July, the county superintendent shall prepare estimates of the revenue available to finance each fund included on each district's preliminary budget. The preliminary budget revenue estimates shall be entered by the county superintendent in the appropriate portion of the form. The county superintendent shall also enter any other financial and statistical information which is necessary for the completion of the budget form and which is available prior to the fourth Monday of July.

History: En. 75-6712 by Sec. 218, Ch. 5, L. 1971.

75-6713. Final budget meeting. On the fourth Monday in July, at the hour of 10 a.m., the budget board of each county shall meet in the office of the county superintendent. The county superintendent, as clerk of the budget board, shall place before the budget board all of the district preliminary budgets submitted to or prepared by the county superintendent, including all information and any attachments required by law. The budget board shall examine and consider the budgets.

The budget board may continue its meeting from day to day but shall adopt the final budget for each district and determine the amounts to be raised by tax levies for each district not later than the second Monday in August and before the fixing of the tax levies for each district. Any taxpayer in any district may attend any portion of the budget board's meeting and be heard on the budget of such district or on any item or amount contained in such budget.

History: En. 75-6713 by Sec. 219, Ch. 5, L. 1971.

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75-6714. Final budget adjustment procedures. At the meeting of the budget board, the budget board shall have the power to make any changes or corrections it may deem necessary or proper in any item or amount of the preliminary budget either by eliminating the item or amount, or by increasing or reducing the amount of any item. When it appears to the budget board that the amount proposed to be expended for any item of the preliminary budget is in excess of the amount actually required to be expended for such item, the budget board shall reduce such amount to the amount actually required to be expended and shall enter in its minutes the reasons for such reduction and shall immediately send a copy of such entry in the minutes to the chairman of the trustees of the applicable district.

Whenever the budget board adjusts a district's budget by any amount or eliminates any item, the budget board shall not take final action on such budget and shall afford the trustees of such district an opportunity to be heard on the budget by calling a hearing to be held on the first Monday in August. At such hearing, the budget board shall invoke the applicable school budget adjustment procedure to determine the amount adopted in the final budget. The school budget adjustment procedure shall be:

(1) ELEMENTARY

If, at such hearing, the trustees and the budget board are unable to agree on the amount or need for any item of an elementary district budget, the majority vote of all members of the elementary district board of trustees shall finally fix and determine such amount or item and this amount or item shall not be changed by the budget board.

(2) HIGH SCHOOL

At the hearing on the high school district budget, the chairman of the budget board or a member of that board appointed by him, the chairman of the board of trustees of the high school district or a member of that board appointed by him, and the county superintendent shall constitute a board of review. This board of review shall have the power and it shall be its duty to consider each amount or item adjusted by the budget board and to fix and determine such amount or item for the final budget. Such amount or item shall not be subject to further review.

History: En. 75-6714 by Sec. 220, Ch. 5, L. 1971.

75-6715. General fund budget adjustment when budget exceeds maximum limitation. If it shall appear to the budget board that a district's preliminary general fund budget exceeds the maximum general fund budget allowed by law, including any additional levy, the budget board shall reduce item amounts of such budget to such an extent that the authorized maximum general fund budget, including any additional levy, shall not be exceeded. In adjusting any item of the preliminary general fund budget, the budget board shall be guided as far as possible by the wishes of the board of trustees. When the district is obligated by contract or the teacher tenure law to employ or retain any person at a specified sal-

ary or wage, the budget board shall not reduce any item of the general fund budget for salaries and wages which would reduce such item to less than that required to meet the district's obligations.

History: En. 75-6715 by Sec. 221, Ch. 5, L. 1971.

75-6716. Adoption and expenditure limitations of final budget. When the budget board has caused the amount of an item of the budget for a district to be determined and set, it shall enter the amount in the portion of the budget form provided for the reporting of the final budget and upon completion of all the items, the chairman and clerk of the budget board shall sign the budget form. The resulting budget shall constitute the final budget and the appropriations for the district for the current school fiscal year. The board of trustees and all officers and employees of the district shall be limited in making expenditures or incurring liabilities to the amount of such appropriations except that transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by law. Expenditures made, liabilities incurred, or warrants issued in excess of any of the final budget appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district and no money of the district shall ever be used to pay the same.

History: En. 75-6716 by Sec. 222, Ch. 5, L. 1971,

Approval of Budget Prerequisite to Issuing Warrants

Where county commissioners had refused to approve school district budget on ground that district had not been legally created, which contention was found invalid by the court, although time for action on the budget and levy of taxes had passed, board was compelled to act by mahdamus since approval of the budget was a necessary prerequisite to the issuance of warrants and the district being valid and having funds available from other sources, it should be enabled to issue warrants to meet its expenses. State ex rel. School District No. 8 v. Lensman, 108 M 118, 130, 88 P 2d 63.

Separation of Appropriations

Under former School District Budget Act, each item in the district's budget constituted an appropriation for a definite and specific purpose and could not be paid out for another, except that a part of an appropriation for one item might be transferred to another when it appears there was an excess appropriation for the one and a deficiency in the other. State ex rel. McHose v. District Court, 95 M 230, 233, 26 P 2d 345.

Collateral References

Schools and School Districts \$93.
79 C.J.S. Schools and School Districts \$343.

75-6717. Fixing and levying tax levies by board of county commissioners. On the second Monday in August when the members of the budget board meet as the board of county commissioners for the purpose of fixing tax levies, the county superintendent, as clerk of the budget board, shall place before the board of county commissioners the final adopted budgets of all districts of the county and any emergency budget adopted by a district during the previous school fiscal year. It shall be the duty of the board of county commissioners of each county to fix and levy on all the taxable value of all the real and personal property within a district or the county, whichever is applicable, all district and county taxation required to finance, within the limitations provided by law, the final budgets and any emergency budgets of all districts of the county.

History: En. 75-6717 by Sec. 223, Ch. 5,

Cross-References

Adult education fund levy, sec. 75-7207. Boundary change, effect on property tax valuation, sec. 75-6530.

Legislature's duty to provide means to maintain schools by taxation or otherwise, Const., Art. XI, sec. 6.

Nonoperating fund levy, sec. 75-7210.

Post-secondary vocational-technical center fund levy, sec. 75-7208.

Retirement fund levy, sec. 78 Tuition fund levy, sec. 75-7203. 75-7204.

Collateral References

Schools and School Districts 203. 79 C.J.S. Schools and School Districts § 383.

47 Am. Jur. 352-356, Schools, §§ 76-82.

75-6718. Allocation of federal funds in lieu of property taxation. Federal funds received by a district under the provisions of Title I of Public Law 81-874, or funds designated in lieu of such federal act by the Congress of the United States, may be allocated to the various operating budgets of the district by the trustees.

History: En. 75-6718 by Sec. 224, Ch. 5, L. 1971.

Compiler's Notes

Title I of Public Law 81-874 referred to above, is compiled in the United States Code as Tit. 20, sec. 236 et seq.

- 75-6719. Completion, filing and delivery of final budgets. After the final budget of each district has been adopted by the budget board, and the county commissioners have levied the taxes to support such budgets, the county superintendent, as clerk of the budget board, shall complete all the remaining portions of the budget forms and shall file a copy of the final budgets in the office of the budget board. The county superintendent shall also:
- send the final budget information to the superintendent of public instruction on the forms provided by the superintendent, on or before the first day of September;
- deliver a copy of the final budget for each district to the county treasurer on or before the first day of September; and
- send a copy of each district's final budget to the applicable school district on or before the first day of September.

History: En. 75-6719 by Sec. 225, Ch. 5, L. 1971.

75-6720. Designation of county officials for joint district budgeting. When all of the schools of the joint district are located in one (1) county, the county superintendent, the budget board, and the county treasurer of the county where the schools of the district are located shall perform the school budgeting duties for such joint district. When the schools of a joint district are located in more than one (1) county, the superintendent of public instruction shall designate the county officials of one (1) county to perform the school budgeting duties for such joint district.

The final budgets of joint districts shall be filed in the office of the county superintendent of each county in which a part of a joint district is located.

History: En. 75-6720 by Sec. 226, Ch. 5, L. 1971.

75-6721. Budgeting procedure for joint districts and establishment of communication procedure. The trustees of a joint district shall adopt a preliminary budget according to the school budgeting laws and send a copy of such budget to the county superintendent of each county in which a part of the joint district is located; provided that two copies of the budget shall be sent to the county superintendent who is responsible for the performance of the budget duties. The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenues and determine the number of mills which need to levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenues and determination of the tax levies.

After determining, in accordance with law, the number of mills which need be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies shall be prepared and signed by the county superintendents involved in the computation. A copy of the statement shall be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the second Monday in August.

History: En. 75-6721 by Sec. 227, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$\sim 93\$.

79 C.J.S. Schools and School Districts \$ 343.

75-6722. Fixing and levying tax levies for joint districts. At the time of fixing levies for county and school purposes on the second Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in such board's county, at the number of mills for each such levy recommended by the joint statement of the county superintendents.

The board of county commissioners shall include in the amounts to be raised by the county levies for schools, all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.

History: En. 75-6722 by Sec. 228, Ch. 5, T. 1971.

79 C.J.S. Schools and School Districts

47 Am. Jur. 352-357 Schools, §§ 76-82.

Collateral References

Schools and School Districts 103.

- 75-6723. Definition of emergency for budgeting purposes. As used in this Title, unless the context clearly indicates otherwise, the term "emergency" for the purpose of school budgeting shall be:
- (1) an increase in the enrollment of a district over the immediately preceding school fiscal year which is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the then current school fiscal year, and that because of such enrollment increase, the district's budget for any or all of the regularly budgeted funds does

not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

- (2) the destruction or impairment of any school property necessary to the maintenance of the school by fire, flood, storm, riot, insurrection or any act of God to such an extent as to render such school property unfit for its present school use;
- (3) a judgment for damages against the district rendered by a court after the adoption of the budget for the current year;
- (4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or
- (5) any other reason of similar consequences that has been approved by the superintendent of public instruction upon petition by the trustees of the district.

History: En. 75-6723 by Sec. 229, Ch. 5, L. 1971.

Cross-Reference

Liability of district, sec. 75-5940.

Judgment Debt as Emergency

A judgment secured by a teacher against a school district in December, 1932, was not paid, and in August, 1933, she instituted mandamus proceedings to compel payment. At that time the district, working under the budget system, had funds on hand no longer covered by appropriations made under the 1932-33 budget, to

pay the claim. The district court erred in dismissing mandamus proceeding, in that the claim of relatrix constituted an emergency which it was the duty of the board of trustees to meet by payment even though it had in the meantime attempted to utilize such funds in making up the budget for 1933-34. State ex rel. McHose v. District Court, 95 M 230, 233, 26 P 2d 345.

Collateral References

Schools and School Districts \$344.

75-6724. Authorization for emergency budget adoption. Emergency budgets may be adopted at any time of the school fiscal year except that emergency budgets required by an enrollment increase that could not have been anticipated at the time of the adoption of the regular budget as provided in subsection (1) of section 75-6723 may not be adopted until after the last day of December.

History: En. 75-6724 by Sec. 230, Ch. 5, L. 1971.

75-6725. Resolution for emergency budget and, under certain circumstances, petition of superintendent of public instruction. Whenever the trustees of any district shall deem that an emergency exists, they may adopt a resolution proclaiming such emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding such meeting. The emergency resolution shall also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such funds for the current school fiscal year.

If the trustees shall deem that an emergency exists for any reason other than the conditions specified in subsections (1), (2), (3), or (4) of sec-

tion 75-6723, they shall petition the superintendent of public instruction for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet such emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction. The petition shall be signed by each trustee.

The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may then adopt a resolution of emergency, and may subsequently take all other steps required for the adoption of an emergency budget. Approval of the petition by the superintendent of public instruction shall merely authorize the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve the trustees of the necessity of complying with the requirements of the school emergency budgeting laws. Approval of the petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency.

History: En. 75-6725 by Sec. 231, Ch. 5, L. 1971.

75-6726. Notice of emergency budget resolution. A copy of the emergency resolution shall be published one (1) time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees and a copy of the resolution shall be posted at each schoolhouse of the district. A copy of the emergency resolution shall also be delivered to the county superintendent and to the county clerk, as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution shall be done not less than one (1) week before the day specified in the resolution for the consideration and adoption of an emergency budget.

History: En. 75-6726 by Sec. 232, Ch. 5, L. 1971.

75-6727. Emergency budget limitation, preparation and adoption procedures. The meeting of the trustees to consider and adopt an emergency budget shall be open to the public and any taxpayer in the district shall have the right to appear and be heard. If at such a meeting a majority of the trustees present shall find that an emergency exists, the trustees may make and adopt a preliminary emergency budget on the regular budget form setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund which was included on the final budget of the district for the current school fiscal year. The budget shall be itemized to show the amount appropriated for each item as required on the budget form.

When the emergency is due to any increase of enrollment, the maximum amount of the emergency budget for all funds shall be determined in the following manner:

- (1) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the emergency, less any amounts appropriated as capital outlay and any amount appropriated for addition to the cash reserve.
- (2) Divide the amount determined in subsection (1) by the number of pupils originally enrolled in such district during the immediately preceding school fiscal year. The resulting cost per pupil shall constitute the maximum permissible per-pupil expenditure in the emergency budget.
- (3) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result shall be the enrollment increase for the current school fiscal year.
- (4) Multiply the cost per pupil determined in subsection (2) by the enrollment increase determined in subsection (3). The result shall be the maximum limitation on an emergency budget for emergencies due to an increase of enrollment.

In the event of any other type of emergency, the budget shall be limited by those expenditures deemed by the trustees to be reasonable and necessary to finance the stated conditions of the emergency, and the preliminary emergency budget shall be accompanied with the details of the proposed expenditures.

Whenever the trustees adopt a preliminary emergency budget for the transportation fund, the trustees shall attach to such budget a copy of each transportation contract which is connected with the emergency and which has been prepared and executed in accordance with the school transportation contract laws.

After the trustees have adopted the preliminary emergency budget by a majority vote of the trustees, it shall be signed by the chairman of the trustees and the clerk of the district and two (2) copies of it shall be sent to the county superintendent as clerk of the budget board. The county superintendent shall place such preliminary emergency budget before the budget board at the next regular meeting of the board of county commissioners. The budget board shall consider and adopt the final emergency budget and shall have the power to make any change in the preliminary emergency budget that it may deem necessary and proper. After the budget board has adopted the final emergency budget, the chairman and the clerk of the budget board shall sign such budget.

History: En. 75-6727 by Sec. 233, Ch. 5, L. 1971.

75-6728. Filing and delivery of adopted emergency budget. After the emergency budget has been approved by the budget board, the final emergency budget shall be filed in the office of the county superintendent, as clerk of the budget board, and the county superintendent shall immediately send a copy of such budget with a notation of the adoption date and any changes made by the budget board to the applicable district, county treasurer, and the superintendent of public instruction.

History: En. 75-6728 by Sec. 234, Ch. 5, L. 1971.

75-6729. State financial aid for emergency budgets. Whenever a final emergency budget has been adopted for the general fund or the transportation fund to finance the cost of an emergency due to an increased enrollment or any other reason approved by the superintendent of public instruction under the provisions of section 75-6725, the trustees may apply to the superintendent of public instruction for an increased payment from the state public school equalization aid account for the foundation program or for state transportation reimbursement, or both. The superintendent of public instruction shall publish rules and regulations for such application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with this section. When the superintendent of public instruction approves an application, he shall determine the additional amount of state aid from the state public school equalization aid account or the state transportation reimbursement which will be made available to the applicant district because of the emergency caused by an increase in enrollment. The superintendent of public instruction shall notify the applicant district of his approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse such emergency state aid to the eligible district at the time the next regular state aid payment is made.

History: En. 75-6729 by Sec. 235, Ch. 5, L. 1971.

75-6730. Determination of available financing and fixing and levying property taxation for an emergency budget. After the last day of the school fiscal year for which an emergency budget has been adopted, the county treasurer shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund shall be determined by deducting from the county treasurer's year-end cash balance for such fund, the outstanding or registered warrants issued under the regularly adopted final budget for such fund and the cash reserve for such fund which the trustees have established, within the limitations of law, for the following school fiscal year.

The county treasurer shall prepare and deliver a statement on the financial status of each fund included on an emergency budget for a district having such a budget during the preceding year to the board of county commissioners by the first Monday in August. Such statement for each district emergency budget shall include:

(1) the total amount of the issued emergency warrants that are outstanding or registered against each fund of the district;

(2) the amount of the cash balance in each fund included on the emergency budget which is available to finance such outstanding or registered warrants; and

(3) after consideration of the available money in subsection (2), the additional amount of money which is required to finance the outstand-

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ing warrants or registered warrants and interest on such warrants and which must be raised by a tax levy.

For each fund of the emergency budget of each district requiring a tax levy as estabished by subsection (3) of the county treasurer's statement, the board of county commissioners shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

History: En. 75-6730 by Sec. 236, Ch. 5, L. 1971.

79 C.J.S. Schools and School Districts §§ 345, 383. 47 Am. Jur. 352-357, Schools, §§ 76-82.

Collateral References

Schools and School Districts 92(3),

CHAPTER 68

FINANCIAL ADMINISTRATION

Section 75-6801. Fund definitions.

75-6802. Application of law and superintendent of public instruction super-

75-6803. County officials for financial administration when joint district. 75-6804. Annual financial report of county superintendent.

75-6805. Duties of county treasurer. 75-6806. Duties of trustees. 75-6807. Examination of district acc

Examination of district accounting records.

75-6808. Pecuniary interests, letting contracts and calling for bids, under certain circumstances.

75-6809. Entering appropriations on accounting records of county treasurer.

Procedure for issuance of warrants. 75-6810.

75-6811. Recording and payment of warrants by county treasurer.

Transfer among appropriation items of a fund. 75-6812.

75-6813. Lapse of budgeted appropriations and provision for unpaid claims. 75-6814. Expenditure limitation and cash retention of nonbudgeted fund.

75-6801. Fund definitions. As used in this Title, unless the context clearly indicates otherwise:

A "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as

- (1) A "budgeted fund" means any fund for which a budget must be adopted in order to expend any moneys from such fund. The general fund. transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, post-secondary vocational-technical center fund and any other funds so designated by the legislature shall be budgeted funds.
- A "nonbudgeted fund" means any fund for which a budget is not required in order to expend any moneys on deposit in such fund. The school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, interlocal co-operative fund and any other funds so designated by the legislature shall be nonbudgeted funds.

History: En. 75-6801 by Sec. 237, Ch. 5, L. 1971.

Cross-References

Adult education fund, sec. 75-7207.

Appropriation for sectarian purpose prohibited, Const., Art. XI, sec. 8.

Building fund a nonbudgeted fund, sec. 75-7213.

Building reserve fund, secs. 75-7205, 75-7206

Endowment funds, sec. 75-7309.

General fund, purpose of, sec. 75-6901.

Housing and dormitory fund a nonbudgeted fund, sec. 75-7214. Interlocal co-operative agreement fund a nonbudgeted fund, sec. 75-7216.

Miscellaneous federal programs fund a nonbudgeted fund, sec. 75-7212.

Nonoperating fund, secs. 75-7209, 75-7210.

Post-secondary vocational-technical center fund, sec. 75-7208.

Public school fund, Const., Art. XI, secs. 2, 3; sec. 75-7301.

Retirement fund, sec. 75-7204.

School food services fund a nonbudgeted fund, sec. 75-7211.

Traffic education fund a nonbudgeted fund, sec. 75-7215.

DECISIONS UNDER FORMER LAW

Improvements

Former section permitting expenditure of surplus in general school fund for "improving buildings or grounds," did not authorize payment of assessment for sprinkling streets, the improvements contemplated by the statute being those which would materially and permanently enhance the value of the property. City of Butte v. School District No. 1, 29 M 336, 340, 74 P 869.

Injunction To Prevent Unlawful Payment

Under former section authorizing suit by taxpayers against school trustees for restitution of illegally expended funds, injunction did not lie to restrain payment of an alleged illegal claim unless the trustees were insolvent, in which event the complaint was to allege their insolvency. Peterson v. Fugle, 96 M 537, 541, 31 P 2d 1030

75-6802. Application of law and superintendent of public instruction supervision. The school financial administration provisions of this Title shall apply to all moneys of any district or any community college district, excepting the extra-curricular moneys realized from pupil activities. The superintendent of public instruction shall have general supervision over the school financial administration provisions as prescribed by law and shall have the duty to establish such rules and regulations as are necessary to secure compliance with the law.

History: En. 75-6802 by Sec. 238, Ch. 5, L. 1971.

75-6803. County officials for financial administration when joint district. When all of the schools of the joint district are located in one (1) county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one (1) county, the superintendent of public instruction shall designate the county officials of the same county to perform such duties for the joint district as were designated to perform the budgeting duties for the joint district under the provisions of section 75-6720.

The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971.

75-6804 SCHOOLS

75-6804. Annual financial report of county superintendent. No later than the first day of September of each school fiscal year, the county superintendent shall report to the superintendent of public instruction the financial activity during the preceding school fiscal year of each district of the county in accordance with the reporting requirements prescribed by the superintendent of public instruction. Such reports shall be prepared on forms provided by the superintendent of public instruction.

History: En. 75-6804 by Sec. 240, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$345.

Cross-Reference

County superintendent's annual report and receipt, 75-5805.

75-6805. Duties of county treasurer. The county treasurer of each county shall:

- (1) receive and hold all school moneys subject to apportionment, and keep a separate accounting of their apportionments to the several districts which are entitled to a portion of such moneys according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a county-wide levy for a specific, authorized purpose, including:
- (a) the basic county tax in support of the elementary foundation programs,
- (b) the basic special tax for high schools in support of the high school foundation programs,
- (c) the county tax in support of the county's high school transportation obligation,
- (d) the county tax in support of the high school obligations to the retirement systems of the state of Montana,
- (e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs,
- (f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs,
- (g) the county tax for a post-secondary vocational-technical center when levied by the board of county commissioners, and
- (h) any other county tax for schools which may be authorized by law and levied by the county commissioners;
- (2) whenever requested, notify the county superintendent of the amount of county school moneys on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school moneys subject to apportionment, and apportion such county and other school moneys to the districts in accordance with the apportionment ordered by the county superintendent;
- (3) keep a separate, detailed accounting of the expenditures by budget appropriation item within each budgeted fund included on the final budget of each district;
- (4) keep a separate, detailed accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget

of each district and for each nonbudgeted fund established by each district;

- (5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school moneys and properly endorsed by their holders;
- (6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law, or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied;
- (7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than the fifteenth day of December of each year and every three (3) months thereafter until the end of the school fiscal year;
- (8) register district warrants drawn on a budgeted fund in accordance with section 16-2604, R. C. M., 1947, when there are insufficient moneys available in such budgeted fund to make payment of such warrant. Redemption of registered warrants shall be made in accordance with sections 16-2605, 16-2602, and 16-2607, R. C. M., 1947;
- (9) invest the moneys of any district as directed by the trustees of the district but in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R. C. M., 1947, whichever is applicable; and
- (10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district showing the paid warrants, outstanding warrants, registered warrants, amount and types of revenue received, and the cash balance.

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971.

Special Deposit

Effect of former statute requiring county treasurer to keep school moneys as a "special deposit" was not to make the county a bailee thereof but was to constitute the deposit a general one kept in a special account for school purposes. State

ex rel. School Dist. No. 4 v. McGraw, 74 M 152, 154, 240 P 812.

Collateral References

Schools and School Districts = 18, 19. 78 C.J.S. Schools and School Districts §§ 19-21.

47 Am. Jur. 357 et seq., Schools, § 83 et seq.

- 75-6806. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person, other than the trustees, acting as a governing board, shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:
- (1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules and regulations prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees;

- (2) excepting payments under employee contracts, authorize all expenditures of district moneys by the written approval of claims for such expenditures, and cause warrants to be issued for the payment of approved claims and payments under employee contracts;
- (3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;
- (4) invest any moneys of the district in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R. C. M., 1947, whichever is applicable, whenever in the judgment of the trustees such investment would be advantageous to the district;
- (5) report annually to the county superintendent not later than the first day of August, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated. Any elementary district that fails to submit the annual report by the time required shall not be entitled to receive any apportionment of the state interest and income moneys and such forfeited moneys shall be apportioned to the other elementary districts of the county;
- (6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of education;
- (7) cause the accounting records of the district to be audited annually as required by law; and
- (8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district.

History: En. 75-6806 by Sec. 242, Ch. 5, T. 1971.

Collateral References

Schools and School Districts 78 et seq., 92 et seq.

78 C.J.S. Schools and School Districts § 270 et seq.; 79 C.J.S. Schools and School Districts § 331 et seq.

47 Am. Jur. 329 et seq., 357 et seq., Schools, §§ 48 et seq., 83 et seq.

DECISIONS UNDER FORMER LAW

Issuance of Warrants

Under section 1737 of the Political Code of 1895, school trustees were prohibited from drawing a warrant to pay any outstanding claim unless there was money in the county treasury to the credit of the district. Jay v. School District No. 1, 24 M 219, 228, 61 P 250.

Although former sections authorized school trustees to issue warrants in anticipation of school moneys from uncollected taxes to the extent of the sum levied, the legislative assembly did not extend the privilege of going on the pay-as-you-go plan to school districts, as it did to cities and towns. Farbo v. School District No. 1, 95 M 531, 534, 28 P 2d 455.

75-6807. Examination of district accounting records. The accounting records of all first- and second-class district and each third-class district maintaining a high school shall be audited annually by the state examiner in accordance with section 82-1008, R. C. M., 1947.

Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor, or the county treasurer if

there is no county auditor, shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than the fifteenth day of July for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report and shall:

- (1) return the accounting records to the district no later than the fifteenth day of August;
- (2) send a copy of the audit report to the chairman of the trustees; and
- (3) file copies of the audit report with the county superintendent and the county clerk and recorder.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971.

75-6808. Pecuniary interests, letting contracts and calling for bids, under certain circumstances. It shall be unlawful for any trustee to (1) have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for warming, ventilating, furnishing, or repairing the same, or (2) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools, or (3) be employed in any capacity by the school district of which he is trustee.

The trustees of any district shall not let any contract for building, furnishing, repairing or other work for the benefit of the district, or purchasing supplies for the district, without first advertising in a newspaper that will give notice to the largest number of people of the district as determined by the trustees for at least two (2) weeks, calling for bids to perform such work or to furnish such supplies, except:

- (1) the trustees of a third-class district only maintaining elementary schools with fewer than three (3) rooms may contract for such work or supplies without advertising and without bids, when the amount involved is less than eight hundred dollars (\$800);
- (2) the trustees of a third-class district, other than those described in subsection (1), may contract for such work or supplies, without advertising and without bids, when the amount involved is less than fifteen hundred dollars (\$1,500); and
- (3) the trustees of a second-class district or a first-class district may contract for such work or supplies, without advertising and without bids, when the amount involved is less than two thousand five hundred dollars (\$2.500).

In all cases where bidding is required, the trustees shall award the contract to the lowest responsible bidder except that the trustees shall have the right to reject any or all bids.

With regard to contracting for work or supplies, the board of trustees of a community college district shall be subject to the provisions of section 75-8118.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971.

Cross-References

Contracts for construction or furnishing of buildings, sec. 75-8210.

Covenant of indemnity to accompany bids, sec. 6-501.

Making of contract to which school officer a party unlawful, sec. 94-810. Preference to Montana contractors, secs.

82-1924 to 82-1925.1,

Preference to Montana labor, secs. 41-701 to 41-703.

Preference to Montana materials, sec.

Transportation contract, bid letting, sec.

Taxpayer's Action

A taxpayer may maintain an action in behalf of a school district against its board of trustees to procure the cancellation of a contract for supplies alleged to have been fraudulently let by it. School District No. 2 v. Richards, 62 M 141, 205 P 206.

Transportation for Trustee's Child

Statute was not violated by an agreement between the board of trustees and member thereof, upon closing a school, to furnish his children with transportation to, or board, rent and tuition at, the location of the school to which they were

transferred. State ex rel. Lien v. School District No. 73, 106 M 223, 229, 76 P 2d

Collateral References

Schools and School Districts \$\sim 80(1), (2). 78 C.J.S. Schools and School Districts §§ 279, 285, 289.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in contract with the public. 73 ALR 1352. Relationship as disqualifying interest

within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

Rejection of bids: right of public authorities to reject all bids for public work or contract. 31 ALR 2d 469.

Revocation, prior to execution of formal written contract, of vote or decision of public body awarding contract to bidder. 3 ALR 3d 864.

Services: contract for personal services as within requirement of submission of bids as condition of public contract. 15 ALR 3d 733.

DECISIONS UNDER FORMER LAW

County High School Trustees

Prior statute was inapplicable to county high school trustees. Missoula County Free High School v. Smith, 91 M 419, 422, 8 P 2d 800.

Transportation Contracts

Former section did not require the trustees of a school district to call for bids for transportation of pupils. In re Trans-portation of School Children, 117 M 618, 620, 161 P 2d 901.

75-6809. Entering appropriations on accounting records of county treasurer. When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for each item on his accounting record.

Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the item appropriations of the regularly adopted final budget by the amount of the emergency budget appropriations for each item of each budgeted fund included on the final emergency budget.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971.

Cross-Reference

Duties of county treasurer, sec. 16-2601.

- 75-6810. Procedure for issuance of warrants. The trustees of each district shall issue all warrants in triplicate and the warrants shall identify:
- (1) the budgeted fund or nonbudgeted fund on which the warrant is drawn;
- the appropriation item of the budgeted fund or the type of expenditure for a nonbudgeted fund on which the warrant is drawn; and

(3) the warrant as an emergency warrant, if it is drawn on an emergency budget.

Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of chapter 13 of Title 59, R. C. M., 1947, provided that the facsimile signature device shall not be available to the other countersigner of the warrant.

The original copy of the warrant shall be delivered to the payee; the duplicate shall be sent immediately to the county treasurer; and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original."

However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971.

Collateral References

Schools and School Districts \$\sim 95(2)\$. 79 C.J.S. Schools and School Districts \$347.

75-6811. Recording and payment of warrants by county treasurer. Immediately after receiving a duplicate warrant from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund and appropriation item identified on such warrant. The recording of the warrants shall allow for the computation of the unexpended appropriation amount of appropriation items of a budgeted fund from the accounting records.

Whenever it appears to the county treasurer that an appropriation item of a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such appropriation item, the county treasurer shall immediately notify the appropriate district of the expended condition of the appropriation item and the district shall not issue another warrant against such appropriation item until its budgeted amount has been increased.

After receiving a duplicate warrant which will exceed the unexpended balance of an original or revised amount of an appropriation item of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft of an appropriation item before the presentation of the original warrant for payment, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Appropriation" and return the warrant to the person presenting it for payment of registration.

Whenever a warrant will overexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Funds" and return the warrant to the person presenting it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971.

Cross-References

Destruction of warrants after 25 years, sec. 59-516.

Duties of county treasurer, sec. 16-2601. Interest on warrants, sec. 16-2604.

Collateral References

Schools and School Districts \$95(4).
79 C.J.S. Schools and School Districts \$350.

75-6812. Transfer among appropriation items of a fund. Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

Such transfers shall not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall immediately notify the county treasurer in writing of any transfer between appropriation items and the county treasurer shall enter such transfer on his accounting records.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971.

75-6813. Lapse of budgeted appropriations and provision for unpaid claims. All appropriations for a budgeted fund in the regular or emergency budget for a given school fiscal year shall lapse on the last day of such school fiscal year except the appropriations for uncompleted improvements in progress of construction. Any lawful claim presented to the district for payment under a lapsed appropriation shall be an obligation of the budget for the next ensuing school fiscal year.

History: En. 75-6813 by Sec. 249, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 293.
79 C.J.S. Schools and School Districts 339.

75-6814. Expenditure limitation and cash retention of nonbudgeted fund. The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund shall be the amount of cash balance of such nonbudgeted fund. The cash balance of a nonbudgeted fund shall remain to the credit of such nonbudgeted fund from year to year unless a transfer is specifically authorized by this Title.

History: En. 75-6814 by Sec. 250, Ch. 5, L. 1971.

CHAPTER 69

STATE EQUALIZATION AID TO PUBLIC SCHOOLS

Section 75-6901. Purpose and definition of foundation program and general fund. 75-6902. Definition and calculation of average number belonging (ANB).

75-6903. Circumstances under which the regular average number belonging may be increased.

75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.

75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for ele-

mentary and high schools.

75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated

school foundation program financing.
75-6907. Definition of interest and income moneys.

75-6908. Distribution of interest and income moneys by superintendent of public instruction.

75-6909. Apportionment of interest and income moneys by county superintendent.

75-6910. Procedure for distribution of interest and income moneys in a county.

75-6911. Budget estimations of interest and income moneys.

75-6912. Basic county tax and other revenues for county equalization of the elementary district foundation program.

75-6913. Basic special levy and other revenues for county equalization of high school district foundation program.

75-6914. Apportionment of county equalization moneys by county superintendent.

75-6915. Formulas for apportionment of county equalization moneys.

75-6916. Definition of and revenue for state equalization aid.

75-6917. Purpose of state equalization aid and duties of the board of education for distribution.

75-6918. Duties of the superintendent of public instruction for state equalization aid distribution.

75-6919. Formula for state equalization aid apportionment.

75-6920. Estimation of state equalization level and state equalization aid for budget purposes.

75-6921. Additional county levy for state deficiency.

75-6922. Permissive levy.

75-6923. Additional levy for general fund and election for authorization to impose.

75-6924. General fund cash reserve.

75-6925. Eligibility for and payment of state impact aid.

75-6926. Computation of general fund net levy requirement by county superintendent.

75-6927. Proration and calculation of foundation program for a joint district.

75-6901. Purpose and definition of foundation program and general fund. A uniform system of free public schools, sufficient for the education of and open to all school age children of the state shall be established and maintained throughout the state of Montana. The state shall aid in the support of its several school districts on the basis of their financial need as measured by the foundation program and in the manner established in this Title.

The principal budgetary vehicle for achieving the minimum financing as established by the foundation program shall be the general fund of the district. The purpose of the general fund shall be to finance those general maintenance and operational costs of a district not financed by other funds established for special purposes in this Title.

The amount of the general fund budget for each school fiscal year shall not exceed the financing limitations established by this Title but shall be no less than the amount established by law as the foundation program. The general fund budget shall be financed by the foundation program revenues and may be supplemented by the permissive levy and additional voted levies, in the manner provided by law.

75-6902 SCHOOLS

History: En. 75-6901 by Sec. 251, Ch. 5, L. 1971.

Cross-References

Free common schools to be established and maintained, Const., Art. XI, sec. 1.

Collateral References

Schools and School Districts 11. 78 C.J.S. Schools and School Districts 13.

Definition and calculation of average number belonging 75-6902. (ANB). The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half (1/2) day. When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

- (1) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;
- (2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town; or
- (3) a school has not been accredited by the board of education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.

Regularly enrolled, full-time pupils who have reached the age of six (6) years and who are attending a kindergarten program of an elementary district established under the provisions of section 75-7507 may be included in the calculation of the average number belonging of each school conducting a kindergarten program.

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 21.

78 C.J.S. Schools and School Districts 21.

47 Am. Jur. 360-363, Schools, §§ 89-91.

Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds. 80 ALR 2d 953.

75-6903. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in section 75-6902, may be increased when:

- (1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with section 75-6602. The average number belonging for such school shall be established by the county superintendent and approved, disapproved or adjusted by the superintendent of public instruction;
- (2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with sections 75-6603, 75-6604 or 75-6605. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school;
- (3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June;
- (4) the district is conducting, or will conduct during the ensuing school fiscal year, a special education class or program. The authorized increase in the average number belonging is prescribed by section 75-7813 and shall be available only when the operation of such special education class or program has been approved by the superintendent of public instruction in accordance with the special education law. In order to obtain the benefit of this increased average number belonging, a school shall not include the pupils attending a full-time special education class or program in the regular calculation of the average number belonging; or
- (5) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by section 75-6904.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971.

75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in subsection (5) of section

75-6904 SCHOOLS

75-6903, may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

- (1) To determine if a district is eligible for an increased foundation program due to an unusual enrollment increase, the average number belonging used for the establishment of the foundation program for the current year and for each year of the immediately preceding three (3) years shall be used to calculate the percentage increase or decrease in average number belonging for the current year's foundation program over the immediately preceding year, and similarly calculate the percentage increase or decrease in average number belonging for each of the two preceding years. The three (3) annual percentage increases or decreases shall be averaged to obtain the average annual percentage increase or decrease in average number belonging. The district shall be eligible for the unusual enrollment increase if the average annual increase is not less than three per cent (3%).
- (2) When a district is eligible under subsection (1), the district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by one hundred eighty (180). The resulting average number belonging shall be increased by the ration that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.
- (3) Prior to May 10, the district shall estimate the probable average number belonging to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.
- (4) No later than May 10, the district shall submit its application for an unusual enrollment increase to the board of school budget supervisors (budget board). Such application shall include:
- (a) the computation of the average annual percentage increase in average number belonging as provided in subsection (1) above;
- (b) the estimate of the current school fiscal year's average number belonging, as provided in subsection (2) above;
- (c) the estimated average number belonging for the ensuing school fiscal year, including the factual information on which the estimate is based, as provided in subsection (3) above; and
- (d) any other information or data that may be requested by the budget board.
- (5) The budget board shall review the application to determine if the district is eligible for an increase in its foundation program as provided in subsection (1) above and to determine if the estimate of the anticipated increase in average number belonging is substantiated. The budget board may then accept, reject, or adjust the district's estimate of the ensuing year's average number belonging. After approving an estimate, the budget board shall:
- (a) determine the percentage increase which the estimated average number belonging for the ensuing school fiscal year is over the esti-

mated average number belonging for the current school fiscal year as provided for in subsection (2) above; and

- (b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (7) if the increase in subsection (5) (a) above is at least twice the average annual percentage increase as provided in subsection (1) above.
- (6) If the budget board approves the application for an unusual enrollment increase, it shall send the application to the superintendent of public instruction together with any other information or data requested by the superintendent of public instruction on or before May 25. The superintendent of public instruction shall immediately review all the factors of the application and the approval of the budget board, and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing school fiscal year. The superintendent of public instruction shall notify the district of his decision by the fourth Monday in June.
- (7) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing school fiscal year shall be computed as follows:
- (a) after the actual average number belonging for the current school fiscal year has been computed, the normal average number belonging increase is determined by applying the annual percentage increase, as computed in subsection (1) above, to the actual average number belonging for the current school fiscal year;
- (b) subtract the actual average number belonging for the current school fiscal year from the approved estimated average number belonging for the ensuing school fiscal year; and
- (c) the difference between the amount determined in subsection (7) (b) above and the amount determined in subsection (7) (a) above shall be the maximum allowable increase added to the actual average number belonging for the current school fiscal year for the purpose of establishing the ensuing year's foundation program.

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971.

75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools. The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for 1971-72

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be seven thousand four hundred eleven dollars (\$7,411), if said school is approved as an isolated school.

- (2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be seven thousand four hundred eleven dollars (\$7,411) plus two hundred thirty-two dollars (\$232) per pupil on the basis of the average number belonging over nine (9).
- (3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be nine thousand four hundred ninetysix dollars (\$9,496) plus three hundred twenty dollars (\$320) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).
- (4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be sixteen thousand seven hundred ninety-six dollars (\$16,796) plus two hundred nine dollars (\$209) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).
- (5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of five hundred ninety-eight dollars (\$598) shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of five hundred seventy-two dollars (\$572) shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed four hundred seventy dollars (\$470) for each pupil.

(6) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

High School Schedule for 1971-72

- (7) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-six thousand and forty dollars (\$36,040).
- (8) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand five hundred two dollars (\$1,502) shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand three hundred forty-six dollars (\$1,346) shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of nine hundred forty-nine dollars

- (\$949) shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of seven hundred thirty-four dollars (\$734) shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of six hundred eighty-five dollars (\$685) shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed six hundred forty-eight dollars (\$648) per pupil.
- (9) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

Elementary School Schedule for 1972-73 and Succeeding Years

- (10) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be seven thousand five hundred eighty-six dollars (\$7,586), if said school is approved as an isolated school.
- (11) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be seven thousand five hundred eightysix dollars (\$7,586) plus two hundred fifty-two dollars (\$252) per pupil on the basis of the average number belonging over nine (9).
- (12) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be nine thousand eight hundred forty-five dollars (\$9,845) plus three hundred forty dollars (\$340) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).
- (13) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be seventeen thousand one hundred forty-five dollars (\$17,145) plus two hundred twenty-eight dollars (\$228) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).
- (14) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred eighteen dollars (\$618) shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of five hundred ninety-two dollars (\$592) shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred

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- (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed four hundred eighty-nine dollars (\$489) for each pupil.
- (15) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

High School Schedule for 1972-73 and Succeeding Years

- (16) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-six thousand seven hundred dollars (\$36,700).
- (17) For a secondary school having an ANB of more than twentyfour (24) pupils, the maximum one thousand five hundred twenty-nine dollars (\$1,529) shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand three hundred seventy-three dollars (\$1,373) shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of nine hundred seventy-six dollars (\$976) shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of seven hundred sixty-one dollars (\$761) shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred thirteen dollars (\$713) shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed six hundred seventy-five dollars (\$675) per pupil.
- (18) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.
- (19) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:
- (a) determine the per-ANB schedule amount for the school, as defined by this section, from the high school schedule;

- (b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the seventh (7th) and eighth (8th) grades of the junior high school;
- (c) multiply the per-ANB schedule amount determined in subsection (a) by the ANB calculated in subsection (b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and
- (d) subtract the amount determined in subsection (e) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971.

75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing. As used in this title, the term "foundation program" shall mean the minimum operating expenditures as established herein, that are sufficient to provide for the educational program of a school. It shall be financed by (1) county equalization moneys, (2) state equalization aid, and (3) when required, moneys from an additional county levy for a state deficiency. In addition, the elementary school foundation programs shall be supported by interest and income moneys. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund.

The dollar amount of the foundation program shall be eighty per cent (80%) of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in section 75-6905. The foundation program of an elementary school having an ANB of nine (9) or fewer pupils which is not approved as an isolated school under the provisions of section 75-6608 shall be eighty per cent (80%) of the schedule amount but the county and state shall participate in financing one-half $(\frac{1}{2})$ of the foundation program and the district shall finance the remaining one-half $(\frac{1}{2})$ by a tax levied on the property of the district. When a school of nine (9) or fewer pupils is approved as isolated under the provisions of section 75-6608, the county and state shall participate in the financing of the total amount of the foundation program.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971.

75-6907. Definition of interest and income moneys. As used in this Title, the term "interest and income moneys" shall mean the total of the following revenues, as provided in section 5, article XI of the constitution of the state of Montana:

- (1) ninety-five per cent (95%) of the interest received from the investment of the public school fund;
- (2) ninety-five per cent (95%) of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;
- (3) ninety-five per cent (95%) of the income received from the leasing of state school lands after any deductions that may be made under the provisions of chapter 24 of Title 81, R. C. M., 1947; and
- (4) ninety-five per cent (95%) of any other income derived from any other covenant affecting the use of state school lands.

The remaining five per cent (5%) of such revenues shall be annually credited to the public school fund.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971.

Cross-Reference

Public school fund, Const., Art. XI, sec. 2; sec. 75-7301.

75-6908. Distribution of interest and income moneys by superintendent of public instruction. The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year to the credit of the account established by the state treasurer for such moneys by the last business day of February following the calendar year in which the moneys were received.

On or before the first Monday of March the superintendent of public instruction shall distribute the total amount of the interest and income moneys on deposit with the state treasurer to the several counties of the state. The amount to be distributed to each county shall be calculated as follows:

- (1) the total amount to be distributed shall be divided by the approved total number of school census children in the state of Montana, as established by the approved school census report of each district for the current school fiscal year under the provisions of sections 75-5936 and 75-5937, to determine the per census child payment of the interest and income moneys; and
- (2) the per census child payment determined in subsection (1) shall be multiplied by the approved number of school census children reported by each district of the county. The result is the portion of interest and income moneys to be distributed to such county.

The total amount of the interest and income moneys deposited with the state treasurer in accordance with this section shall be distributed in the annual distribution made by the superintendent of public instruction. The superintendent of public instruction shall certify to the county superintendent of each county, the amount of interest and income moneys distributed to his county.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971.

75-6909. Apportionment of interest and income moneys by county superintendent. Immediately upon receipt of the interest and income

moneys from the superintendent of public instruction, the county superintendent shall apportion the county's receipt of interest and income moneys to the several elementary districts of the county. Such apportionment shall not be made to any elementary district that:

- (1) will not operate at least one school during the current school fiscal year for at least one hundred eighty (180) days as provided in section 75-7402; or
- (2) did not submit its annual fiscal report to the county superintendent by the first day of August as provided in subsection (5) of section 75-6806.

History: En. 75-6909 by Sec. 259, Ch. 5, L. 1971.

lands and interest on school funds, Const., Art. XI, sec. 5.

Cross-References

Apportionment of rents from school

County treasurer to notify county superintendent of amount subject to apportionment, sec. 16-2601(7).

- 75-6910. Procedure for distribution of interest and income moneys in a county. The county superintendent shall order the county treasurer to distribute the interest and income moneys to the eligible elementary districts on the following basis:
- (1) the total amount of interest and income moneys received from the state shall be divided by the approved total number of census children in the eligible elementary districts of the county, to determine the per census child apportionment of the interest and income moneys for the county; and
- (2) the apportionment determined in subsection (1) shall be multiplied by the approved number of school census children reported by the district. The result is the portion of interest and income moneys received by the county to be apportioned to such eligible district.

The total amount of the interest and income moneys received from the state shall be apportioned by the county superintendent. The county treasurer shall credit the interest and income moneys to the several elementary districts of the county in accordance with the apportionment order of the county superintendent.

History: En. 75-6910 by Sec. 260, Ch. 5, L. 1971.

75-6911. Budget estimations of interest and income moneys. The interest and income moneys shall be the first source of revenue in calculating the financing of an elementary district foundation program. In June, the superintendent of public instruction shall estimate a state-wide per census child payment of the estimated interest and income moneys that will be available for the ensuing school fiscal year distribution. The superintendent of public instruction shall notify the county superintendents of such estimate by the first day of July. For budgeting purposes, the county superintendent shall use the per census child estimate of the superintendent of public instruction and the approved number of school census children from the last completed census report of the district to estimate the interest

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and income moneys available for the financing of the ensuing year's foundation program.

History: En. 75-6911 by Sec. 261, Ch. 5, L. 1971.

75-6912. Basic county tax and other revenues for county equalization of the elementary district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic tax of twenty-five (25) mills on the dollars of the taxable value of all taxable property within the county unless a basic levy of less than twenty-five (25) mills is sufficient to finance the total amount of the foundation programs of all the elementary districts of the county. In order to determine if a lesser levy will be sufficient, the sum of the estimated revenues identified in subsections (1) through (6) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county. If a basic levy of less than twenty-five (25) mills is sufficient to finance the difference determined above, the county commissioners shall fix a basic levy of such amount. No elementary district within a county levying less than twenty-five (25) mills shall receive any distribution of state equalization aid.

The proceeds realized from the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in section 75-6914 and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with subsection (1) of section 75-6805;

- (1) the portion of the federal forest reserve funds distributed to a county and designated for the common school fund under the provisions of section 79-205, R. C. M., 1947;
- (2) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of section 79-702, R. C. M., 1947;
- (3) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of section 79-2102, R. C. M., 1947;
- (4) all moneys which are paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;
- (5) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and
- (6) any federal or state moneys distributed to the county as payment in lieu of the property taxation established by the county levy required by this section.

History: En. 75-6912 by Sec. 262, Ch. 5, 79 C.J.S. Schools and School Districts § 383. 47 Am. Jur. 356, Schools, § 82.

Collateral References

Schools and School Districts 103(1).

Basic special levy and other revenues for county equalization of high school district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of fifteen (15) mills on the dollar of the taxable value of all taxable property within the county unless a basic special levy for high schools of less than fifteen (15) mills is sufficient to finance the total amount of the foundation programs of all the high school districts of the county. In order to determine if a lesser levy will be sufficient, the estimated revenues identified in subsections (1) and (2) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county. If a basic special levy for high schools of less than fifteen (15) mills is sufficient to finance the difference determined above, the county commissioners shall fix a basic special levy for high schools of such amount. No high school district within a county levying less than fifteen (15) mills shall receive any distribution of state equalization aid.

The proceeds realized from the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in section 75-6914, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with subsection (1) of section 75-6805:

- (1) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and
- (2) any federal or state moneys distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section.

History: En. 75-6913 by Sec. 263, Ch. 5, 79 C.J.S. Schools and School Districts § 383. 47 Am. Jur. 356, Schools, § 82.

Collateral References
Schools and School Districts 103(1).

- 75-6914. Apportionment of county equalization moneys by county superintendent. The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a quarterly basis. Such apportionments shall be known as "county equalization moneys." Before the county superintendent makes the quarterly apportionments, he shall:
- (1) deduct from the revenues available in the basic county tax account, the amount required for the quarter to pay the county's obligation for elementary transportation reimbursements; and
- (2) deduct from the revenues available in the basic special tax for high schools account, the amount required from the quarter to pay the county's obligation for high school out-of-county tuition.

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History: En. 75-6914 by Sec. 264, Ch. 5, L. 1971.

Collateral References

Schools and School Districts == 19.
78 C.J.S. Schools and School Districts 21.

75-6915. Formulas for apportionment of county equalization moneys. After making such deductions prescribed in section 75-6914, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several elementary districts of the county and in the basic special tax for high schools account to the several high school districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

Elementary Schools

- (1) Determine the percentage that the sum of interest and income moneys plus the county equalization moneys available for the support of the foundation programs of the elementary districts in the county is of the total amount of the foundation programs of all such elementary districts.
- (2) Determine the percentage that the interest and income moneys available to each elementary district (excluding any county equalization moneys) is of the amount of the foundation program of each such elementary district.
- (3) Elementary districts in which the percentage determined in subsection (2) exceeds the percentage determined in subsection (1) shall not be entitled to an apportionment of the county equalization moneys available for the equalization of the elementary district foundation program and shall be excluded from further consideration under this procedure.
- (4) After elimination of elementary districts under subsection (3), determine the percentage that the sum of the interest and income moneys available to all remaining elementary districts in the county plus the county equalization moneys available for the support of the foundation programs of the elementary districts in the county is of the total amount of the foundation programs of all such remaining elementary district.
- (5) The difference between the percentage determined in subsection (4) above and the percentage determined for such eligible elementary district in subsection (2) above, shall be multiplied by the foundation program amount for each remaining elementary district to determine the portion of the county equalization moneys available to each eligible elementary district.

High Schools

- (6) Determine the percentage that the county equalization moneys available for the support of the foundation programs of the high school districts in the county is of the total amount of the foundation programs of all such high school districts.
- (7) Multiply the foundation program amount of each high school district by the percentage determined in subsection (6) above to determine

the portion of the county equalization moneys available to each high school district.

No district shall be deprived of its needful share of the county moneys apportioned under this section by reason of it being nonaccredited. Nor shall any territory situated within a county be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of subsection (5) of section 75-6912 or subsection (1) of section 75-6913.

The county equalization moneys apportioned under these procedures shall constitute the second source of revenue in calculating the financing of the elementary district foundation program and shall constitute the first source of revenue in calculating the financing of the high school district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes.

History: En. 75-6915 by Sec. 265, Ch. 5,

75-6916. Definition of and revenue for state equalization aid. There shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state, twenty-five per cent (25%) of all moneys received from the collection of income taxes under chapter 49 of Title 84, R. C. M., 1947, and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R. C. M., 1947, as provided by section 84-1901, R. C. M., 1947. In addition to these revenues, one-half (½) of the moneys received from the treasurer of the United States as the state's shares of oil and gas royalties under the Act of Congress of February 25, 1920 shall be paid into the same earmarked revenue fund.

As used in this Title, the term "state equalization aid" shall mean those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971.

Collateral References
Schools and School Districts 17.
78 C.J.S. Schools and School Districts
18.

75-6917. Purpose of state equalization aid and duties of the board of education for distribution. The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of education shall:

- (1) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;
- (2) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and
- (3) in the months of December and April of each school fiscal year, order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 18.
78 C.J.S. Schools and School Districts
19.

- 75-6918. Duties of the superintendent of public instruction for state equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state equalization aid by:
- (1) establishing each district's annual entitlement to state equalization aid, based on the data reported in the budget for each district that has been duly adopted for the current school fiscal year and verified by the superintendent of public instruction, and by applying such verified data under the provisions of the state equalization aid allocation procedure prescribed in section 75-6919;
- (2) recommending to the board of education the annual entitlement of all districts to state equalization aid to enable the board of education to order the distribution of state equalization aid;
- (3) distributing by state warrant the state equalization aid for each district entitled to such aid, to the county treasurer of the county where the district is located, in accordance with the distribution ordered by the board of education;
- (4) keeping a record in his office of the full and complete data concerning moneys available for state equalization aid and the entitlements for state equalization aid of the several districts of the state;

- (5) reporting to the board of education at its meeting in July and December of each year, the estimated amount which will be available for state equalization aid for the next succeeding six-month period, commencing on July 1 and January 1; and
- (6) reporting to both branches of the state legislative assembly in any year when a session is convened the figures and data available in his office concerning distributions of state equalization aid during the preceding two school fiscal years, the amount of state equalization aid then available, the apportionment made of such available moneys but not yet distributed, and the latest estimate of accruals of moneys available for state equalization aid.

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 18.
78 C.J.S. Schools and School Districts
19.

- 75-6919. Formula for state equalization aid apportionment. The superintendent of public instruction shall apportion the state equalization aid, individually for the elementary districts of a county or the high school districts of a county, in accordance with section 75-6918 and on the basis of the following procedure:
- (1) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state moneys available for state equalization aid) is of the total amount of the foundation programs of all counties;
- (2) Determine the percentage that the total funds available in each county in support of the foundation programs in such county (excluding state moneys available for state equalization aid) is of the total amount of the foundation programs of all districts of such county;
- (3) Counties in which the percentage determined in subsection (2) exceeds the percentage determined in subsection (1) shall not be entitled to an apportionment of the state equalization aid;
- (4) After elimination of the counties referred to in subsection (3), determine the percentage that the total moneys available to all remaining counties in support of the foundation program (including the state moneys available for state equalization aid) is of the total amount of the foundation programs of all such remaining counties;
- (5) Each district of each remaining county shall be entitled to an apportionment of the state equalization aid which shall be the difference between the percentage determined in subsection (4) and the percentage determined for such county in subsection (2) multiplied by the foundation program amount for such district.

The superintendent of public instruction shall supply the county treasurer and the county superintendent with a report of the apportionments of state equalization aid to the several districts of the county and the state equalization aid shall be apportioned to such districts in accordance with such report.

75-6920 SCHOOLS

History: En. 75-6919 by Sec. 269, Ch. 5, L. 1971.

Collateral References
Schools and School Districts 19.
78 C.J.S. Schools and School Districts

75-6920. Estimation of state equalization level and state equalization aid for budget purposes. The apportionment of state equalization aid shall be the third source of revenue in calculating the financing of the elementary district foundation program and it shall be the second source of revenue in calculating the financing of the high school district foundation program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the superintendent of public instruction shall annually estimate a uniform percentage of each district's foundation program which state foundation program revenues and county equalization moneys, together, will be capable of financing. Such estimate shall be called the "state equalization level" and shall be based on the best available data and calculated according to the allocation procedure provided in section 75-6919.

The superintendent of public instruction shall notify each county superintendent of the state equalization level estimate by the first day of July. The county superintendent shall use such estimated state equalization level in establishing the budget estimate of the financing available for each district's foundation program for the ensuing school fiscal year.

History: En. 75-6920 by Sec. 270, Ch. 5, L. 1971.

75-6921. Additional county levy for state deficiency. If the estimated state equalization level made under the provisions of section 75-6920 is less than one hundred per cent (100%), it shall be the duty of the county commissioners of each county to levy, separately for the elementary districts and the high school districts, additional taxes in such number of mills on the taxable value of all taxable property within the county as shall be required to complete the financing of the foundation programs of all elementary districts or all high school districts of the county.

As provided in section 75-6805, the county treasurer shall keep a separate accounting of the proceeds realized from these mill levies. The county superintendent shall apportion the proceeds of the mill levies to the elementary districts of the county or the high school districts of the county, whichever the case may be, on the following basis:

- (1) Determine the total amount required from this source of revenue by the several elementary or high school districts of the county.
- (2) Determine the total amount of moneys available for this source of revenue.
- (3) Calculate the percentage the amount determined in subsection (2) is of the amounts determined separately in subsection (1) for all elementary or all high school districts.
- (4) Multiply each elementary district or each high school district requirement for this source of revenue by the percentage calculated in subsection (3).

When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary districts or high school districts of the county, whichever the case may be, the excess amount of county moneys shall be retained by the county for reduction of the ensuing year's additional county levy for elementary schools or high schools.

The apportionment of county moneys under this section shall be known as the "additional county levy for state deficiency" and it shall be the last source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program.

The county superintendent shall compute the budgeted requirement for this source of revenue for each district and for the county, and shall supply the county requirements for the elementary district foundation programs and the high school district foundation programs to the county commissioners on the second Monday of August in accordance with section 75-6717.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971.

75-6922. Permissive levy. Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedule in section 75-6905, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. The financing of such general fund budget amount shall be known as the "permissive levy," and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in section 75-6926.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971.

75-6923. Additional levy for general fund and election for authorization to impose. The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

- (1) building, altering, repairing or enlarging any schoolhouse of the district;
 - (2) furnishing additional school facilities for the district;
 - (3) acquisition of land for the district;
- (4) proper maintenance and operation of the school programs of the district.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition. Such special election shall be called and conducted in the man-

75-6924 SCHOOLS

ner prescribed by this Title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

FOR the additional levy. AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional

Authorization to levy an additional tax under the provisions of this section shall be effective for only one school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971.

Parochial Schools

School board adopting resolution calling for special tax levy for expending funds for employment of teachers to teach secular subjects in parochial school violated former statutes dealing with special levies since statutes pertained to public schools only. State ex rel. Chambers v. School District No. 10, — M —, 472 P 2d 1013.

Collateral References

Schools and School Districts 103(2). 108(1). 79 C.J.S. Schools and School Districts

§§ 379, 408.

75-6924. General fund cash reserve. At the end of each school fiscal year, the trustees of each district shall designate what portion of the general fund end-of-the-year cash balance shall be earmarked as cash reserve for the purpose of paying general fund warrants issued by the district from the first day of July to the last day of November of the ensuing school fiscal year. The amount of the general fund cash balance that is earmarked as cash reserve shall not exceed thirty-five per cent (35%) of the final general fund budget for the ensuing school fiscal year and shall not be used for property tax reduction in the manner permitted by subsection (2) of section 75-6926 for other receipts. Any portion of the general fund end-of-the-year cash balance that is not earmarked for eash reserve purposes shall be cash reappropriated which shall be used for property tax reduction as provided in subsection (2) (c) of section 75-6926.

History: En. 75-6924 by Sec. 274, Ch. 5, L. 1971.

- 75-6925. Eligibility for and payment of state impact aid. Any district which shall have children of employees of a public institution may be eligible for state impact aid under the following provisions:
- (1) An "employee" means an employee of a public institution under the administration of the department of public institutions as defined in section 80-1403, R. C. M., 1947, who resides on the property of such a public institution;
- (2) A school district shall receive annually from moneys available for state equalization aid one hundred fifty dollars (\$150) for each elementary pupil, and two hundred fifty dollars (\$250) for each high school pupil, whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the district where the pupil attends school;
- (3) A district which is eligible for state impact aid shall apply for such aid to the superintendent of public instruction in the manner prescribed by the rules and regulations prescribed by the superintendent of public instruction; and
- (4) The distribution of state impact aid shall be deposited in the general fund of the district and shall not be considered as a part of the state equalization aid but shall be used to reduce the property tax in support of the general fund of the district.

History: En. 75-6925 by Sec. 275, Ch. 5, L. 1971.

- 75-6926. Computation of general fund net levy requirement by county superintendent. The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:
- (1) Determine the total of the district's nonisolated school foundation program requirement to be met by a district levy as provided in section 75-6906, the district's permissive levy amount as provided in section 75-6922, and any additional levies authorized by the electors of the district under the provisions of section 75-6923; except that the total of the permissive and additional levies shall not exceed the total amount of the final general fund budget less the foundation program.
- (2) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:
- (a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act:

- (b) anticipated tuition payments for out-of-district pupils under the provisions of sections 75-6317, 75-6320, 75-6321 and 75-7203;
- (c) general fund cash reappropriated, as established under the provisions of section 75-6924;
- (d) anticipated state impact aid received under the provisions of section 75-6925;
- (e) anticipated interest to be earned by the investment of general fund cash in accordance with the provisions of subsection (4) of section 75-6806; and
- (f) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.
- (3) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (2) from the total levy requirement determined in subsection (1).
- (4) The net general fund levy requirement determined in subsection (3) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with section 75-6717.

History: En. 75-6926 by Sec. 276, Ch. 5, L. 1971.

Compiler's Note

Title I of Public Law 81-874, referred to above, is compiled in the United States Code as Tit. 20, secs. 236 to 244.

- 75-6927. Proration and calculation of foundation program for a joint district. In joint districts, the foundation program shall be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the foundation program for which each county is obligated. The proration of the joint district foundation program shall be calculated as follows:
- (1) Divide the joint district foundation program by the ANB of the joint district to determine the per ANB amount of the foundation program.
- (2) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties shall equal the total ANB for the joint district.
- (3) Multiply the per ANB amount of the foundation program determined in subsection (1) by the ANB for each county's portion as determined in subsection (2) to determine the portion of the foundation program for each county.

The portion of a joint district foundation program for each county, as determined in subsection (3) of this section, shall be considered as a separate foundation program in such county for the purposes of calculating the various revenues for the foundation program. The interest and income moneys available to joint elementary districts shall be considered as prorated to the several counties on the basis of each child's county of

residence. After the calculation of the foundation program revenues, the remainder of the general fund revenues shall be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971.

CHAPTER 70

SCHOOL BUSES AND TRANSPORTATION OF PUPILS

Section 75-7001. Definitions. 75-7002. School bus definition and identification requirements. School bus driver qualifications. **75-7**003. 75-7004. Duties of board of education. Duties of the superintendent of public instruction. 75-7005. 75-7006. Penalty for violating law, board of education policies or super-intendent of public instruction rules and regulations. 75-7007. Duties of school bus driver and driver of any vehicle when school bus is stopped or at railroad crossing, and penalty for failure to 75-7008. Duty of trustees to provide transportation, types of transportation, and bus riding time limitation. 75-7009. Discretionary provision of transportation and payment for this transportation. 75-7010. Provision of transportation for nonpublic school children. 75-7011. Power of trustees to purchase and operate bus, contract for bus services, operate a two-way radio, and insure either type of bus. 75-7012. Contracts for transportation. 75-7013. Bid letting for contract bus and payments under any transportation contract. 75-7014. County transportation committee membership. 75-7015. Duties of the county transportation committee 75-7016. Determining residence. Duties of the county transportation committee. 75-7017. Determination of mileage distances. 75-7018. Schedule of maximum reimbursement by bus mileage rates. 75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.
75-7020. Budgeting for transportation and transmittal of transportation contracts. 75-7021. Computation of revenues and net tax levy requirements for the transportation fund budget. 75-7022. State transportation reimbursement. County transportation reimbursement. **75-7023.**

75-7001. Definitions. As used in this Title, unless the context clearly indicates otherwise:

"Transportation" shall mean:

75-7024. Bus depreciation reserve.

- (1) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance; or
- (2) "individual transportation" whereby a district is relieved of actually conveying a pupil. Such individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

An "eligible transportee" shall mean a public school pupil who:

- (1) is not less than six (6) years of age nor has attained his twenty-first (21st) birthday;
 - (2) is a resident of the state of Montana;
- (3) regardless of district and county boundaries, resides at least three (3) miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and
- (4) is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

History: En. 75-7001 by Sec. 278, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$\infty 159\frac{1}{2}.\$
79 C.J.S. Schools and School Districts \$\xi\$ 475-482.

47 Am. Jur. 415-422, Schools, §§ 160-166.

Transportation of school pupils at expense of public. 63 ALR 413; 118 ALR 806 and 146 ALR 625.

75-7002. School bus definition and identification requirements. A "school bus" shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency, and which complies with the bus standards established by the board of education as determined by the Montana highway patrol's annual inspection of school buses and the superintendent of public instruction. Such bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency. Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least eight (8) inches in height. When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971.

Cross-References

Annual inspection of school buses, sec. 32-21-155.1.

Fees based on weight, school buses exempt except for charter service, sec. 32-3307.

Lettering requirement under highway code, sec. 32-2197.

Lighting equipment, sec. 32-21-132.

75-7003. School bus driver qualifications. Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

- (1) he is not less than twenty-one (21) years of age;
- (2) he is of good moral character;
- (3) he is the holder of a chauffeur's license;
- (4) he has filed with the district a satisfactory medical examination report signed by a licensed physician of the state of Montana on a blank provided by the superintendent of public instruction;

- (5) he has completed a standard first-aid course and holds a valid standard first-aid certificate from an authorized instructor. The issuance of such certificate shall be governed by rules and regulations established by the superintendent of public instruction, provided that such rules may suspend this requirement for a reasonable period of time where there has been an inadequate opportunity for securing the first-aid course and certificate;
- (6) he has complied with any other qualifications established by the board of education; and
- (7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section.

History: En. 75-7003 by Sec. 280, Ch. 5, Cross-Reference
Chauffeur's license, special restrictions, sec. 31-128.

75-7004. Duties of board of education. The board of education, by and with the advice of the chief of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the Motor Vehicle Code, to provide uniform standards and regulations for the design, construction and operation of school buses in the state of Montana. Such policies shall:

- (1) prescribe minimum standards for the design and construction of school buses not inconsistent with:
- (a) the minimum standards adopted by the national commission on safety education; or
- (b) the minimum standards adopted by the national highway safety bureau.
- (2) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:
- (a) the current specifications approved by the society of automobile engineers;
 - (b) the Motor Vehicle Code; and
- (c) the requirement that all school buses shall have an alternately flashing pre-warning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with section 32-21-132, R. C. M., 1947.
- (3) establish any other driver qualifications that may be deemed necessary in addition to the qualifications required in section 75-7003.
- (4) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee which shall allow for the establishment of such areas without regard to the district boundary lines within the county.

- (5) prescribe any other criteria for the determination of the residence of a pupil that may be deemed necessary in addition to the criteria established in section 75-7016.
- (6) prescribe any other policies for the operation of school buses which are not inconsistent with the Motor Vehicle Code, the minimum standards adopted by the national commission on safety education for school bus operation, the highway safety standards, and the transportation provisions of this Title.
- (7) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the "rated capacity."

The board of education shall promulgate a schedule that establishes the basis for increasing the individual transportation rates due to isolation as provided in subsection (3) of section 75-7019. The board of education also shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this Title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971.

75-7005. Duties of the superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

- (1) prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of education.
- (2) prescribe rules and regulations for the approval of school bus routing by the county transportation committee;
- (3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of such contracts;
- (4) prescribe rules and regulations for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of education;
- (5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;
- (6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;
- (7) prescribe rules and regulations for the consideration of controversies appealed to him, and rule on such controversies; and
- (8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971.

75-7006. Penalty for violating law, board of education policies or superintendent of public instruction rules and regulations. Every district,

its trustees and employees, and every person under a transportation contract with a district shall be subject to the policies prescribed by the board of education and the rules and regulations prescribed by the superintendent of public instruction. Any trustee or district employee who violates any transportation law or board of education transportation policy or who fails to include as a condition in any district transportation contract the obligation to comply with such law or policies shall be guilty of misconduct and subject to removal from office or employment by proceedings instituted in any court of competent jurisdiction by the county attorney of the county where the district is located. Any person operating a bus under contract with a district who fails to comply with the transportation law or the board of education transportation policies shall be guilty of breach of contract and the contract shall be cancelled after notice and hearing by the trustees of such district.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971.

75-7007. Duties of school bus driver and driver of any vehicle when school bus is stopped or at railroad crossing, and penalty for failure to comply. When outside the limits of an incorporated city or town, the driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop on a public road and has its alternately flashing warning lighting system of four red signal lamps in operation and is receiving or discharging school children, shall stop his vehicle not less than ten (10) feet from such school bus and keep said vehicle stationary until the children have entered the school bus or have alighted and reached the side of the highway on which they live, and the school bus has resumed motion, or the driver has signaled traffic to proceed.

The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway, or when upon a controlled access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

It shall be unlawful to operate any flashing prewarning or warning signal light on any school bus except when the school bus is preparing to stop or is stopped for the purpose of permitting school children to board or alight from the bus.

The driver of any school bus, before crossing any track or tracks of a railroad at grade, shall stop the school bus within fifty (50) feet, but not less than fifteen (15) feet, from the nearest rail of such track and while stopped shall open the door and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, and shall not proceed until he can do so safely. After stopping and proceeding when it is safe to do so, the driver of any school bus shall cross only in a gear of the vehicle that will not necessitate the changing of gears while traversing the crossing, and the driver shall not shift gears while crossing the track or tracks. No stop need be made at any crossing where a police officer or a traffic-control signal directs traffic to proceed.

Any person who shall fail to comply with or who shall violate the provisions of this section shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

History: En. 75-7007 by Sec. 284, Ch. 5, L. 1971.

Cross-References

Lighting equipment and warning devices, standards and specifications, sec. 75-7004.

Overtaking and passing school bus, sec. 32-2197.

Railroad crossings, stopping required, sec. 32-2193.

Restrictions on operation of warning light, sec. 32-2198.
Signal lights required, sec. 32-21-132.

75-7008. Duty of trustees to provide transportation, types of transportation, and bus riding time limitation. The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

The type of transportation provided by a district may be:

- (1) by a school bus; or
- (2) by such individual transportation as:
- (a) paying the parent or guardian for individually transporting the pupil;
 - (b) paying board and room reimbursements;
 - (c) providing supervised correspondence study; or
 - (d) providing supervised home study.

When the parent or guardian of an elementary pupil consents to a trip of over one (1) hour, the trustees may require such eligible transportee to ride a school bus for more than one (1) hour per trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971.

Cross-Reference

Special education pupils, transportation, secs. 75-7814 to 75-7816.

75-7009. Discretionary provision of transportation and payment for this transportation. The trustees of any district also may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district under the following conditions:

- (1) On a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from such school bus because of the lack of seating capacity.
- (2) On a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. Such school bus shall

service those children living the greatest distance from the school to be attended.

(3) On a school bus operated for the purpose of relieving congestion in a school building, or to avoid the necessity of erecting a new building, or for any other reasons of economy or convenience.

When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsections (1) or (2) above, the district may charge each ineligible transportee his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7009 by Sec. 286, Ch. 5, L. 1971.

75-7010. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride such school bus is secured from the operating district by the parent or guardian of such nonpublic school child, and when there is seating capacity available on such school bus. When a nonpublic school child rides a school bus, the operating district shall charge such child his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7010 by Sec. 287, Ch. 5, L. 1971.

- 75-7011. Power of trustees to purchase and operate bus, contract for bus services, operate a two-way radio, and insure either type of bus. The trustees of any district shall have the power to:
 - (1) purchase or rent a school bus;
- (2) purchase or rent a two-way radio for a school bus when the trustees authorize a two-way radio as standard equipment in a school bus because such bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;
- (3) provide for the operation, maintenance and insurance of a school bus or a two-way radio owned or rented by the district; or
- (4) contract with a private party for the transportation of eligible transportees and such contract shall not exceed the term of five (5) years.

When the trustees authorize a two-way radio as standard equipment on a school bus, the two-way radio may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county when their permission and the permission of the federal communications commission is secured. If permission is not secured from these agencies, the frequency assigned by the federal communications commission shall be used for the operation of the two-way radios.

When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply in every respect with the regulations of the board of education for the standards of

equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may, in contracting with private parties, require added safeguards by supplementing the board of education policies in the contract with additional requirements for bus specifications, age of drivers, liability insurance, operating speed or any other contractual condition deemed necessary by the trustees.

Whenever a bus is owned and operated by a district or the bus is operated by a private party under a contract but no condition of such contract requires the private party to carry liability insurance, the trustees shall carry automobile bodily injury and liability insurance in an amount not less than ten thousand dollars (\$10,000) per person and one hundred thousand dollars (\$100,000) for each accident for each bus operated by or under contract with the district.

When a district purchases a school bus, the trustees may purchase such school bus under an installment contract which will be completely executed within three years from the date of the purchase. The trustees also may purchase a school bus without advertising for bids under the provisions of section 75-6808.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971.

Governmental Immunity Waived

Statute requiring school districts to carry liability insurance to cover injuries and property damage that might arise in connection with operation and maintenance of school buses constituted waiver of governmental immunity to extent of insurance required to be carried or actually carried. Longpre v. Joint School District No. 2, 151 M 345, 443 P 2d 1.

Collateral References

Tort liability of public schools and institutions of higher learning, 160 ALR 7 and 84 ALR 2d 489.

Immunity: comment note on rule of governmental tort nonliability as applied to public schools and institutions of higher learning. 33 ALR 3d 703.

Tort liability of public schools and institutions of higher learning for accidents associated with the transportation of students. 34 ALR 3d 1210.

- 75-7012. Contracts for transportation. Any school bus transportation by a private party or individual transportation that is furnished by a district shall be under contract and no district, county or state money shall be paid for such transportation services to any person or firm who does not hold a legal contract with the district. Transportation contracts for the ensuing year shall be completed by the fourth Monday of June except when an eligible transportee establishes residence in the district after the fourth Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.
- (1) Transportation contracts between a district and a private party for the provision of school bus transportation shall be subject to the following requirements:
- (a) The contract shall be completed in quadruplicate and, upon completion, one copy shall be for the county superintendent, one copy for the private party, one copy for the superintendent of public instruction and one copy shall be retained by the district.
- (b) The contract terms shall require conformance to the transportation law, policies of the board of education and rules and regulations of the superintendent of public instruction; and

- (c) The contract shall be signed by the chairman of the trustees and the private party.
- (2) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation shall be subject to the following requirements:
- (a) It shall be completed in quadruplicate and, upon approval, one copy shall be for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;
- (b) It shall be completed on forms promulgated by the superintendent of public instruction;
- (c) The parent or guardian shall sign an affidavit attesting to the place of residence of his child or children; and
- (d) It shall be signed by the chairman of the trustees and the parent or guardian of the eligible transportees.

History: En. 75-7012 by Sec. 289, Ch. 5, L. 1971.

47 Am. Jur. 420, Schools, § 165.

Collateral References

Schools and School Districts 159½.
79 C.J.S. Schools and School Districts \$480.

One transporting children to or from school as independent contractor, 66 ALR 724.

75-7013. Bid letting for contract bus and payments under any transportation contract. Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall secure bids by publishing at least three (3) calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county during a period of twenty-one (21) days. The trustees shall let the contract to the lowest responsible bidder and the trustees shall have the right to reject any and all bids. The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of section 75-6808.

The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

- (1) a contract for such transportation services has been completed; and
- (2) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or
- (3) such contracted services for individual transportation have been actually furnished as conformed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half (½) the daily contract amount.

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971.

DECISIONS UNDER FORMER LAW

Common Carriers

Former statute requiring that board of trustees call for bids before awarding contracts to "common carriers" for transportation of pupils could not be construed so as to include all carriers as distinguished from parents or guardians. In re Transportation of School Children, 117 M 618, 622, 161 P 2d 901.

- 75-7014. County transportation committee membership. To co-ordinate the orderly provision of a uniform transportation program within a county under the transportation law, board of education transportation policies, and the transportation rules and regulations of the superintendent of public instruction, there shall be a county transportation committee created in each county of the state of Montana. The membership of the county transportation committee shall be:
 - (1) the county superintendent;
- (2) the chairman of the board of county commissioners or a member of such board designated by the chairman;
- (3) a trustee or district employee designated by the trustees of each high school district of the county;
- (4) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of such elementary districts; and
- (5) a representative of a district of another county when the transportation services of such a district are affected by the actions of the transportation committee, but such a representative shall have a voice only in matters affecting transportation within such district or by such district.

The county transportation committee shall have at least five members and if this minimum membership cannot be realized in the manner prescribed in subsections (1), (2), (3) and (4) above, the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

The county superintendent shall be the chairman of the county transportation committee and a quorum shall consist of a majority of the membership. The county transportation committee shall meet on the call of the chairman or any three members of such committee.

History: En. 75-7014 by Sec. 291, Ch. 5, L. 1971.

- 75-7015. Duties of the county transportation committee. It shall be the duty of the county transportation committee to:
- (1) establish the transportation service areas within the county, without regard to district boundary lines, which will define the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program;
- (2) approve, disapprove, or adjust the school bus routing submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1);

- (3) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation due to isolated conditions of the eligible transportee's residence; and
- (4) conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees, and act on such appeals on the basis of the facts established at such hearing.

After a fact-finding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal such decision to the superintendent of public instruction who shall render a decision on the basis of the facts established at the county transportation committee hearing.

The trustees of any district which objects to a particular school bus route or transportation service areas to which it has been assigned may request a transfer to another school bus route or transportation service areas to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, twenty per cent (20%) of the qualified electors, as prescribed in section 75-6410. may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with section 75-6406 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on the first day of July of the ensuing school fiscal vear.

Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

History: En. 75-7015 by Sec. 292, Ch. 5, L. 1971.

75-7016. Determining residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, such residence shall be established on the basis of the general state residence law as provided in section 83-303, R. C. M., 1947. Where any district or county is determined to be responsible for paying tuition for any pupil in accordance with sections 75-6313, 75-6314, and 75-6316,

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the residence of the pupil for tuition purposes shall be the residence of such pupil for transportation purposes.

History: En. 75-7016 by Sec. 293, Ch. 5, L. 1971.

- 75-7017. Determination of mileage distances. When the mileage district that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee or the superintendent of public instruction, such mileage shall be established on the following basis:
- (1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer;
- (2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured;
- (3) The measurement shall begin six (6) yards from the family home and ends six (6) yards from the entrance of the school grounds closest to the route; and
- (4) The route traversed for the measurement shall be the route designated by the trustees, except that such route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route shall not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

History: En. 75-7017 by Sec. 294, Ch. 5, L. 1971.

- 75-7018. Schedule of maximum reimbursement by bus mileage rates. The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. The operation of any vehicle reimbursed under the rate provisions of this schedule shall be a school bus, as defined by this Title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.
- (1) The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees boarding such school bus on an approved route is not less than seventy-five per cent (75%) of its rated capacity:
- (a) twelve cents (\$.12) per bus mile for a school bus with a rated capacity of six (6) children or less;
- (b) fifteen cents (\$.15) per bus mile for a school bus with a rated capacity of not less than seven (7) but not more than eleven (11) children;

- (c) twenty cents (\$.20) per bus mile for a school bus with a rated capacity of not less than twelve (12) but not more than thirty (30) children; and
- (d) when the rated capacity is more than thirty (30) children, an additional one-half cent (\$.005) per bus mile for each additional child in the rated capacity in excess of thirty (30) shall be added to a base rate of twenty cents (\$.20) per bus mile.
- (2) When the number of eligible transportees boarding a school bus on an approved route is less than seventy-five per cent (75%) of its rated capacity, the rate per bus mile traveled shall be computed as follows:
- (a) determine the number of eligible transportees boarding the school bus on such route;
- (b) multiply the number determined in subsection (2) (a) by twenty-five per cent (25%) and round-off to the nearest whole number;
- (c) add the amount calculated in subsection (2) (b) to the number determined in subsection (2) (a) to determine the adjusted rated capacity for the bus; and
- (d) use the adjusted rated capacity determined in subsection (2) (c) as the rated capacity of such bus to determine the rate per bus mile traveled from the rate schedule in subsection (1) above.

The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of education.

History: En. 75-7018 by Sec. 295, Ch. 5, L. 1971.

- 75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimbure the parent or guardian on the basis of the following schedule:
- (1) When the parent or guardian provides the transportation conveyance, the following per diem rates shall be used to determine the total reimbursable amount for all eligible transportees residing in one household, including both elementary and high school pupils; except that eligible transportees shall be considered as coming from separate households when such eligible transportees are required by the trustees to attend schools in entirely separate communities and cannot be transported by the same conveyance or cared for in the same community. When the distance from the eligible transportee's residence to his assigned school is:
- (a) not less than three (3) miles but less than five (5) miles, the rate shall be thirty cents (\$.30) for one (1) eligible transportee and twelve

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cents (\$.12) for each additional eligible transportee but shall not exceed sixty-six cents (\$.66) for all the eligible transportees of one household;

- (b) not less than five (5) miles but less than seven (7) miles, the rate shall be thirty-six cents (\$.36) for one (1) eligible transportee and twelve cents (\$.12) for each additional eligible transportee but shall not exceed eighty-four cents (\$.84) for all the eligible transportees of one household.
- (c) not less than seven (7) miles but less than twelve (12) miles, the rate shall be forty-eight cents (\$.48) for one (1) eligible transportee and twelve cents (\$.12) for each additional eligible transportee but shall not exceed one dollar and eight cents (\$1.08) for all the eligible transportees of one household; or
- (d) twelve (12) or more miles, the rate shall be sixty cents (\$.60) for one (1) eligible transportee and twelve cents (\$.12) for each additional eligible transportee but shall not exceed one dollar and twenty cents (\$1.20) for all the eligible transportees of one household.
- (2) When the parent or guardian provides the transportation conveyance from the eligible transportee's residence to an approved route of the school bus designated by the trustees for the transportation of such eligible transportee, the per diem rates prescribed in subsection (1) shall be used to determine the reimbursable amount for such transportation on the basis of the distance from the residence to such bus route. When the distance from the eligible transportee's residence to the approved bus route is not less than one and one-half $(1\frac{1}{2})$ miles but less than three (3) miles, the reimbursement rate shall be one-half $(\frac{1}{2})$ the rate prescribed in subsection (1)(a) above. No transportation reimbursement shall be paid to a parent or guardian when the distance is less than one and one-half $(\frac{11}{2})$ miles.
- (3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The board of education shall promulgate a schedule that allows varying percentage increases of the per-day individual transportation rates prescribed in subsections (1) and (2) in relation to the degree of isolation, except that such increases shall not exceed one hundred per cent (100%).
- (4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the

household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be one dollar and fifty cents (\$1.50) for one eligible transportee, sixty cents (\$.60) for a second eligible transportee of the same household and thirty cents (\$.30) for each additional eligible transportee of the same household.

- (5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study; provided that the course of instruction is approved by the trustees and supervised by the district.
- (6) The schedules provided in this section shall not be altered by any authority other than the legislative assembly of the state of Montana, except as provided in subsection (3).

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971.

- 75-7020. Budgeting for transportation and transmittal of transportation contracts. The trustees of any district furnishing transportation to pupils who are residents of such district shall have the authority and it shall be their duty to provide a transportation fund budget that is adequate to finance such district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget shall include:
- (1) an adequate amount to finance the maintenance and operation of district owned and operated school buses;
- (2) the annual contracted amount for the maintenance and operation of school buses by a private party;
- (3) the annual contracted amount for individual transportation, including any increased amount due to isolation, which shall not exceed the schedule amounts prescribed in section 75-7019;
- (4) any amount necessary for the purchase, rental, or insurance of school buses; and
- (5) any other amount necessary to finance the administration, operation or maintenance of the transportation program of the district, as determined by the trustees. The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill any obligation to provide transportation in accordance with the transportation law for any pupils not residing in the district at the time of the adoption of the preliminary budget and who subsequently became residents of such district during the school fiscal year or pupils who have become eligible transportees since the adoption of the preliminary budget because his legal residence has been changed. The budgeted contingency amount shall not exceed ten per cent (10%) of the transportation schedule amount as calculated under the provisions of sections 75-7018 and 75-7019 for all transportation services authorized by such schedule and provided by the district; unless ten per cent (10%) of such transportation schedule amount shall be less than one hundred dollars (\$100), in which

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case one hundred dollars (\$100) shall be the maximum limitation for such budgeted contingency amount.

As provided in section 75-6724 an emergency transportation fund budget may be adopted subject to the provisions of the emergency budgeting law.

The transportation fund budgeted expenditures appropriated by the trustees shall be reported on the regular budget form prescribed by the superintendent of public instruction in accordance with section 75-6704 and the adoption of the transportation fund budget shall be completed in accordance with the school budgeting laws. When the adopted preliminary budget is sent to the county superintendent, the trustees also shall send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent. Such contracts shall substantiate all contracted transportation services incorporated in the preliminary budget; and, after the county superintendent has utilized the contracts for such purpose but before the fourth Monday of July, he shall send all the transportation contracts received by him to the superintendent of public instruction. When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for such services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for such deviation.

History: En. 75-7020 by Sec. 297, Ch. 5, L. 1971.

Elementary School Outside District

Transportation to another elementary school outside the district is paid from a budget of the district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.

High School Pupils

Transportation for high school pupils is provided at the expense of the state and county and not by the school district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.

- 75-7021. Computation of revenues and net tax levy requirements for the transportation fund budget. Before the fourth Monday of July and in accordance with section 75-6712, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:
- (1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in sections 75-7018 and 75-7019 shall be determined by adding the following amounts:
- (a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district. To determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district; plus
- (b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the

district multiplied by the number of pupil instruction days scheduled for the ensuing school attendance year; plus

- (c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus
- (d) the amount budgeted on the preliminary budget for the contingency amount permitted in section 75-7020, except if such amount exceeds ten per cent (10%) of the total of subsections (a), (b), and (c) or one hundred dollars (\$100) whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.
- (2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by three (3) and the resulting one-third (1/3) amount shall be used to determine the available state and county revenue to be budgeted on the following basis:
- (a) the resulting one-third (1/3) amount shall be the budgeted state transportation reimbursement except that the state transportation reimbursement for the transportation of special education pupils under the provisions of sections 75-7815 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;
- (b) the resulting one-third (1/3) amount except as provided for joint elementary districts in subsection (2)(e) shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of section 75-6914;
- (c) the resulting one-third (1/3) amount multiplied by two shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section except as provided for joint high school districts in subsection (2)(e) and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of section 75-7815 shall be one-third (1/3) of the schedule amount attributed to the transportation of special education pupils;
- (d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and eash reappropriated shall be used to reduce the county financing obligation in subsections (b) or (c) and, if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (a); and
- (e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.
- (3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

- (a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus
- (b) anticipated payments from other districts for providing school bus transportation services for such district; plus
- (c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus
- (d) anticipated interest to be earned by the investment of transportation fund cash in accordance with the provisions of subsection (4) of section 75-6806; plus
- (e) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus
- (f) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than twenty per cent (20%) of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.
- (4) The district levy requirement for each district's transportation fund shall be computed by:
- (a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third (1/3) of the schedule amount as determined in subsection (2); and
- (b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4) (a), above.
- (5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.
- (6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and such levies shall be made by the county commissioners in accordance with section 75-6717.

History: En. 75-7021 by Sec. 298, Ch. 5, L. 1971.

75-7022. State transportation reimbursement. Any district providing school bus transportation or individual transportation in accordance with the transportation law, board of education transportation policy, and superintendent of public instruction transportation rules and regulations

shall receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of section 75-7018 and 75-7019. The state transportation reimbursement shall not exceed one-third (1/3) of the reimbursement amounts established in such sections or one-third (1/3) of the district's transportation fund budget, whichever is smaller, and shall be computed on the basis of the number of days the transportation services were actually rendered. In determining the amount of the state transportation reimbursement, no amount claimed by a district shall be considered for reimbursement unless such amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

Requests for the state transportation reimbursement shall be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements shall be routed by the district to the county superintendent, who after reviewing such claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining their compliance with the transportation law, board of education transportation policy, and the transportation rules and regulations of the superintendent of public instruction. After making any necessary adjustments to such claims, he shall cause their payment by ordering a disbursement from the state moneys appropriated by the legislative assembly of the state of Montana for the state transportation reimbursement. Such payment of all the district's claims within one county shall be made to the county treasurer of such county and the county superintendent shall apportion such payment in accordance with the apportionment order supplied by the superintendent of public instruction.

History: En. 75-7022 by Sec. 299, Ch. 5, L. 1971.

- 75-7023. County transportation reimbursement. The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with the transportation law, board of education transportation policy, and the transportation rules and regulations of the superintendent of public instruction shall be the same as the state transportation reimbursement payment except that:
- (1) the high school apportionment of the county transportation reimbursement shall be twice the state transportation reimbursement payment;
- (2) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of subsection (2)(d) of section 75-7021, the annual apportionment shall be limited to such budget amount;
- (3) when a district receives a state transportation reimbursement of two-thirds (2/3) the schedule amount for the transportation of special education pupils, the apportionment of the high school county transportation reimbursement shall be adjusted to provide only a one-third (1/3) high

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school county reimbursement of the transportation of special education pupils; and

(4) when the county transportation reimbursement for a school bus has been prorated between two (2) or more counties because such school bus is conveying pupils of more than one (1) district located in such counties, the apportionment of the county transportation reimbursement shall be adjusted to pay the amount computed under such proration.

The county superintendent shall apportion the elementary county transportation reimbursement from the proceeds of the county basic levy and the high school county transportation reimbursement from the proceeds of the county tax for high school transportation. The county superintendent shall order the county treasurer to make such apportionments in accordance with subsection (2) of section 75-6805 and after the receipt of the semiannual state transportation reimbursement payments.

History: En. 75-7023 by Sec. 300, Ch. 5, L. 1971.

75-7024. Bus depreciation reserve. The trustees of any district owning a school bus or a two-way radio used for transportation purposes may establish a bus depreciation reserve fund for the purpose of replacing such bus or radio. When a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed twenty per cent (20%) of the original cost of a school bus or a two-way radio for transportation purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for such district, and a levy shall be made by the county commissioners in accordance with section 75-6717.

Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this Title and shall be made only for the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

Whenever the trustees of a district maintaining a bus depreciation reserve fund deem it to be within the best interests of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under section 75-6410, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer shall be approved and the trustees shall immediately order the county treasurer to make the approved transfer.

History: En. 75-7024 by Sec. 301, Ch. 5, L. 1971.

CHAPTER 71

SCHOOL DISTRICT AND COUNTY SCHOOL BONDS

- Section 75-7101. Applicable laws for school district bonding.
 - 75-7102. Definition of school district for bonding purposes. 75-7103.
 - Trustees may issue bonds for certain purposes. 75-7104. Limitations on amount of bond issue.
 - 75-7105. Definition of forms of bonds.
 - Form of bond to be issued. 75-7106.
 - 75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds.
 - Dates of issue and payments. 75-7108.
 - 75-7109.
 - 75-7109. Refunding bonds may be issued without an election.
 75-7110. Election required to authorize the issuance of school district bonds and the methods of introduction.
 - 75-7111. Additional requirements for trustees resolution calling bond election.
 - 75-7112. Form, contents and circularization of petition proposing school district bond election.
 - 75-7113.
 - Validation of petition and county registrar's certificate. Trustees' consideration of validated petition proposing bond election. 75-7114.
 - 75-7115. Preparation and form of ballots for bond election.
 - 75-7116. Notice of bond election by separate purpose.
 - Determination of approval or rejection of proposition at bond elec-75-7117.
 - 75-7118. Trustees resolution to issue school district bonds.
 - 75-7119. Notice of sale of school district bonds.
 - 75-7120. Publication of notice of sale of school district bonds.
 - 75-7121. Sale of school district bonds.
 - 75-7122.
 - Form and printing of school district bonds. Registration of school district bonds by county treasurer and copy 75-7123. for preservation.
 - 75-7124. Delivery of school district bonds and disposition of moneys realized from sale.
 - 75-7125. County attorney to assist in the proceedings.
 - 75-7126. School district liable on bonds.
 - 75-7127. Preparation of debt service fund budget.
 - 75-7128. Computation of net levy requirement for debt service fund and proceedings if board of county commissioners fail to make ade-
 - quate levy.

 Payment of debt service obligations by county treasurer and termi-75-7129.
 - 75-7130. Redemption of bonds and investment of debt service fund moneys.
 - Entries of payments and notification of school district. 75-7131.
 - 75-7132. Disposition of moneys remaining in debt service fund. County bonding for county high school not placed in high school 75-7133.
 - Purposes and petition for county high school bonds. 75-7134.
 - 75-7135. Duty of board of county commissioners to call election and issue bonds.
 - 75-7136. Proration of county bond proceeds between high schools of the county.
 - Payment of county bonds. 75-7137.
 - Budget prohibition when county bonds issued. **7**5-7138.

75-7101. Applicable laws for school district bonding. The school district bonding provisions of this Title and all applicable laws of the state shall govern:

(1) the issuance, refunding and sale of school district bonds; (2) the levying of taxes for payment of the principal and interest on school district bonds; and (3) the redemption of bonds. Should there be a conflict between the provisions of this Title and the provisions of any other law of the state, the provisions of this Title shall govern.

History: En. 75-7101 by Sec. 302, Ch. 5, L. 1971.

Cross-References

Attorney general's report on regularity of bond issue proceedings, secs. 82-410 to

Bidder's bond, sec. 6-501.

Destruction of bonds after 25 years, sec.

Investment of bond proceeds for which there is no immediate demand, sec. 16-20Investment of school district or county

high school moneys, sec. 16-2050.
Investment of school funds in bonds,
Const., Art. XI, sec. 3; sec. 81-1001.
Liability of officers for failure to make

levy or for misuse of sinking fund, secs. 59-534 to 59-536.

Testing validity, when action to be brought, sec. 82-412.

University system bonding power, sec. 75-8504 et seq.

DECISIONS UNDER FORMER LAW

High School Districts' Public Works Program

Chapter 275, Laws 1947 (75-4601 to 75-4606, now repealed) held unconstitutional as contravening sec. 6, Art. XIII of the Montana Constitution as it was merely an attempt to expand the constitutional limit of indebtedness by pyramiding another tax unit upon the identical property and taxpayers of a school district. Rankin v. Love, 125 M 184, 232 P 2d 998, 1001. This case expressly overrules House v. School District No. 4, 120 M 319, 184 P 2d 285.

Chapter 275, Laws 1947 (75-4601 to 75-4606) was unconstitutional as decided in the Rankin case only in so far as it purported to authorize the high school district to incur indebtedness to the full amount permitted by the Constitution irrespective of the debts of the common school districts comprising the high school district. Such districts (high school) had the authority to issue bonds and incur indebtedness, so long as such indebtedness, when appor-

tioned among the common school districts in proportion to the assessed valuation of the property in each and this part added to the existing indebtedness of the com-mon school districts respectively, did not bring the debt of any of the latter in excess of the limit prescribed by sec. 6, Art. XIII of the Montana Constitution. Wright v. Browning High School District, 125 M 495, 240 P 2d 862, 863.

Section dealing with undertaking of public works program by trustees was not unconstitutional as a deprivation of due process or a special law. Lorang v. High School District "C" of Cascade County, 126 M 204, 247 P 2d 477.

Loans

Former statute authorizing repayment of loans advanced to trustees in reliance upon bonds subsequently declared void was constitutional. State ex rel. Northwestern Nat. Bank v. Dickerman, 16 M 278, 292, 40 P 698.

- 75-7102. Definition of school district for bonding purposes. For the purposes of indebting an elementary district or a high school district by the issuance of bonds under the provisions of this Title, the term "school district' shall mean any elementary district or high school district except the following types of high schools recognized as high school districts without a bonding authority in section 75-6501:
- (1) High schools operated by an elementary district in a county that has not been divided into high school districts; or
- County high schools located in a county that has not been divided into high school districts by the county high school boundary commission.

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971.

- Trustees may issue bonds for certain purposes. The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:
- building, altering, repairing, buying, furnishing, equipping a school, teacherage, dormitory, gymnasium, or other building for school purposes in the school district:

- (2) purchasing the necessary lands for a school, teacherage, dormitory, gymnasium, or other building for school purposes in the school district;
- (3) securing a water supply for a school, teacherage, dormitory, gymnasium, or other building for school purposes in the school district;
 - (4) buying a school bus;
- (5) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;
- (6) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or
 - (7) funding a judgment against the district.

Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the ninth grade of the high school is served thereby.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971.

Cross-References

Building fund, sec. 75-7213. County high school bonds, purposes for which authorized, sec. 75-7134.

Combined Grade School and High School

Board of trustees of high school district and common school district included therein had authority to build grade school and high school in one unit sharing common facilities and to issue bonds therefor. Long v. School District No. 44, 149 M 220, 425 P 2d 822.

Gymnasium

Where a district had voted a bond issue for the construction of an outdoor high school gymnasium and athletic field, the board having provided for athletic training, a place for giving proper instruction therein, whether within or outside of a building, became a necessary part of the

school plant, and the board of trustees was authorized to issue bonds for its construction. McNair v. School District No. 1, 87 M 423, 426, 288 P 188, 69 ALR 866.

Collateral References

Schools and School Districts 97(1).
79 C.J.S. Schools and School Districts §§ 359, 360.

43 Am. Jur. 287 et seq., 309 et seq., Public Securities and Obligations, §§ 21 et seq., 52 et seq.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 ALR 190.

rectangle of the property of t

Rescission of vote authorizing school district or other municipal bond issue. 68 ALR 2d 1041.

75-7104. Limitations on amount of bond issue. The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is five per cent (5%) of the assessed value of the taxable property therein as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The words "value of the taxable property therein" as used herein shall be given the same meaning and construction and are used in the same sense as in section 6 of article XIII of the state constitution. All bonds issued in excess of such amount shall be null and void.

When the total indebtedness of a school district has reached the five per cent (5%) limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this Title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971.

Cross-References

Debt limitation on school districts, Const., Art. XIII, sec. 6.

Issuing Less Bonds Than Authorized at Election

Issuance of public bonds in a lesser amount than that authorized by the election does not warrant injunction against

their issuance. (See Const., Art. XIII, sec. 6.) State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 370, 58 P 2d 264.

Collateral References

Schools and School Districts \$97(3).
79 C.J.S. Schools and School Districts
§ 361.

43 Am. Jur. 287, Public Securities and Obligations, § 21 et seq.

DECISIONS UNDER FORMER LAW

High School Districts

Where a high school district was created and the effect was to divide the powers already exercised by a school district in an attempt to expand the constitutional limit of indebtedness by the pyramiding of another tax unit upon the identical property and taxpayers of the existing school district, an injunction was issued restraining the trustees of the district from becoming indebted to a sum greater than the then constitutional limit of 3% of the value of the taxable property; but such injunction was inoperative after date that raise of indebtedness limit to 5% became effective. Rankin v. Love, 125 M 184, 232 P 2d 998, 1002, overruling House v. School District No. 4, 120 M 319, 184 P 2d 285.

Where a high school district was created which overlapped the common school districts, such high school district could incur indebtedness so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part, added to the existing indebtedness of the common school districts, did not bring the debt of any of the latter in excess of the limit prescribed by sec. 6, Art. XIII of the Montana Constitution. Wright v. Browning High School District, 125 M 495, 240 P 2d 862, 863, decided prior to 1958 amendment of Const., Art. XIII, sec. 6.

75-7105. Definition of forms of bonds. As used in this Title, unless the context clearly indicates otherwise:

"Amortization bonds" means the form of bonds on which a part of the principal must be paid each time interest becomes payable. The part payment of principal increases at each installment in the same amount that the interest decreases. The combined interest and principal due on each due date remains the same until the bonds are paid. The final payment may vary from prior payments in the amount resulting from disregarding fractional cents in prior payments.

"Serial bonds" means the form of bonds which are payable in annual installments and on which the amount to be redeemed each year is determined by dividing the total amount of the bonds by the term of the bond issue. However, the first or the first and second installments may vary

from the others to the extent resulting from fixing the amounts of each bond of the other installments at one hundred dollars (\$100), at five hundred dollars (\$500) or at some multiple thereof.

History: En. 75-7105 by Sec. 306, Ch. 5, L. 1971.

75-7106. Form of bond to be issued. All bonds issued by a school district shall be amortization bonds unless serial bonds, in the judgment of the trustees, will be more advantageous to the school district and can be sold at a comparatively reasonable rate of interest.

History: En. 75-7106 by Sec. 307, Ch. 5, L. 1971.

75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds. School district bonds shall not be issued for a term longer than twenty (20) years except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than ten (10) years unless the unexpired term of the bonds to be refunded or redeemed is in excess of ten (10) years in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the school district five (5) years from the date of issue and on any interest payment due date thereafter before maturity and shall be so stated on the face of the bonds. The interest shall not exceed seven per cent (7%) per annum and shall be payable semiannually.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971.

Collateral References
Schools and School Districts 97(6).
79 C.J.S. Schools and School Districts

75-7108. Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the largest monthly tax collections, all school district bonds shall preferably bear a date of some day in June or December. For this reason, the bonds may be dated back not more than five (5) months from the time of the actual sale but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments. The failure to date such bonds in June or December shall not affect their validity.

§ 371.

History: En. 75-7108 by Sec. 309, Ch. 5, L. 1971.

75-7109. Refunding bonds may be issued without an election. Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue bonds for such purpose, the trustees, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

- (1) the facts regarding the outstanding bonds that are to be redeemed;
- (2) the reasons for issuing new bonds; and
- (3) the term and details of the new bond issue.

After the adoption of such resolution, the trustees shall give notice of the sale of such new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election. Such new bonds shall be sold in open competitive bidding, by written bids, or by sealed bids. Bonds shall not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least one-half $(\frac{1}{2})$ of one per cent (1%) per annum less than the rate of interest in the bonds to be refunded or redeemed.

History: En. 75-7109 by Sec. 310, Ch. 5, L. 1971.

Collateral References

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voter. 97 ALR 442.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision, 157 ALR 794.

- 75-7110. Election required to authorize the issuance of school district bonds and the methods of introduction. A school district shall not issue bonds for any purpose other than that provided in section 75-7109 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue such bonds. A school district bond election shall be called by a resolution as prescribed under the provisions of section 75-6406 when:
- (1) the trustees, of their own volition, adopt a resolution to that effect; or
- (2) the trustees have received a petition which asks that an election be held to consider a bond proposition and which has been validated under the provisions of section 75-7114.

History: En. 75-7110 by Sec. 311, Ch. 5, L. 1971.

Cross-References

County school bond issues, election required, sec. 75-7135.

School elections, sec. 75-6401 et seq.

Purchase of Site

Where the only question submitted to the electors of a school district of the second class was whether bonds in a given amount should be authorized for the purpose of erecting a school building, authorization to issue the bonds did not carry with it the implied authority to purchase a site although question of acquisition might have been submitted as part of same proposition. Nichols v. School District No. 3, 87 M 181, 188, 287 P 624.

Rescission of Valid Election

There is no provision of the written law

of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the question already voted upon, especially where no fraud is either alleged or shown in the conduct of the election already held. Schmiedeskamp v. Board of Trustees of School District No. 24, 128 M 493, 278 P 2d 584, 586, 68 ALR 2d 1035.

Collateral References

Schools and School Districts \$97(4).
79 C.J.S. Schools and School Districts § 366.

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax. 68 ALR 2d 1041.

- 75-7111. Additional requirements for trustees resolution calling bond election. In addition to the requirements for calling an election that are prescribed in sections 75-6406 and 75-6408, the trustees' resolution calling a school district bond election shall:
- (1) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;
- (2) fix the maximum number of years in which the proposed bonds would be paid; and
- (3) in the case of initiation by a petition, state the essential facts about the petition and its presentation.

History: En. 75-7111 by Sec. 312, Ch. 5, L. 1971.

- 75-7112. Form, contents and circularization of petition proposing school district bond election. Any petition for the calling of an election on the proposition of issuing school district bonds shall:
- (1) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;
- (2) be signed by not less than twenty per cent (20%) of the school district electors qualified to vote under the provisions of section 75-6410 in order to constitute a valid petition;
- (3) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed they shall be fastened together to form a single petition when submitted to the county registrar;
- (4) be circulated by any one or more qualified electors of the school district; and
- (5) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition he circulated. Such affidavit shall attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it.

History: En. 75-7112 by Sec. 313, Ch. 5, L. 1971; amd. Sec. 8, Ch. 83, L. 1971.

Collateral References

Schools and School Districts \$97(4). 79 C.J.S. Schools and School Districts § 366.

- 75-7113. Validation of petition and county registrar's certificate. The petitioners for a school district bond election shall submit their petition to the county registrar of the county where the school district is located for validation of the signatures on the petition. The county registrar shall examine the petition and shall attach or endorse thereon a certificate which shall state:
- (1) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of section 75-6410;
- (2) which and how many of the persons whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(3) whether the number of qualified signers established in subsection (2) is more or less than twenty per cent (20%) of the total number of qualified electors established in subsection (1).

After completing the examination, the county registrar shall immediately send the petition and his certificate to the school district. The county registrar shall not receive compensation for the examination of school district bond petitions.

History: En. 75-7113 by Sec. 314, Ch. 5, L. 1971; amd. Sec. 9, Ch. 83, L. 1971.

75-7114. Trustees' consideration of validated petition proposing bond election. When a school district receives a school district bond petition from the county registrar, a meeting of the trustees shall be called for the consideration of the petition. The trustees shall be the judges of the adequacy of the petition and their findings shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. The petition shall be valid if the trustees find that it is in proper form and bears the signatures of not less than twenty per cent (20%) of the school district electors who are qualified to vote under the provisions of section 75-6410.

History: En. 75-7114 by Sec. 315, Ch. 5, L. 1971; amd. Sec. 10, Ch. 83, L. 1971.

75-7115. Preparation and form of ballots for bond election. The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO."

Shall the board of trustees be authorized to issue and sell bonds of this
school district in the amount of dollars (\$) bearing in-
terest at a rate not more than seven per cent (7%) per annum, payable
semiannually, during a period not more than years, for the purpose
(here state the purpose the same way as in the notice of elec-
tion).

ı	BONDS	- YES.

BONDS — NO.

History: En. 75-7115 by Sec. 316, Ch. 5, L. 1971; amd. Sec. 39, Ch. 234, L. 1971.

Combined Grade School and High School Bond issue of joint common school district and high school district for purpose of building combined grade school and high school was not illegal for failure to state cost of land separately on ballot. Elliot v. School District No. 64-JT, 149 M 299, 425 P 2d 826.

Form of Ballot

Use of words "For" and "Against" on ballot in school bond election was substantial compliance with statute requiring words "Yes" and "No." Elliot v. School District No. 64-JT, 149 M 299, 425 P 2d 826.

Notice and Ballot Not Misleading

Where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 370, 58 P 2d 264.

75-7116. Notice of bond election by separate purpose. Any school district bond election shall be conducted in accordance with the school election provisions of this Title except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No
The polls will be open from o'clockm, and until
Dated and posted this day of, A.D., 19
Chairman of School District No.
Chairman of School District No.

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor.

State of Montana

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971.

Notice and Ballot Not Misleading

Where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 370, 58 P 2d 264.

- 75-7117. Determination of approval or rejection of proposition at bond election. When the trustees canvass the vote of a school district bond election under the provisions of section 75-6423, they shall determine the approval or rejection of the school bond proposition in the following manner:
- (1) determine the total number of electors of the school district who are qualified to vote under the provisions of section 75-6410 from the list of electors supplied by the county registrar for such school bond election;
- (2) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;
- (3) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (2) by the amount determined in subsection (1); and
- (4) when the calculated percentage in subsection (3) is forty percent (40%) or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or
- (5) when the calculated percentage in subsection (3) is more than thirty per cent (30%) but less than forty per cent (40%), the school bond proposition shall be deemed to have been approved and adopted if sixty per cent (60%) or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or
- (6) when the calculated percentage in subsection (3) is thirty per cent (30%) or less, the school bond proposition shall be deemed to have been rejected.

If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of such proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for such school district bond election.

History: En. 75-7117 by Sec. 318, Ch. 5, L. 1971; amd. Sec. 11, Ch. 83, L. 1971.

Failure To Canvass Bond Election
Failure of board of trustees to canvass

vote as required by statute did not make bonds issued by school district illegal and void. Long v. School District No. 44, 149 M 220, 425 P 2d 822.

75-7118. Trustees resolution to issue school district bonds. Within sixty (60) days after the date of the election certificate or as soon thereafter as is practical in the judgment of the trustees, the trustees shall

adopt a resolution providing for the issuance of bonds of the school district. Such resolution also shall specify:

- (1) the number of series or installments in which the bonds are to be issued;
 - (2) the amount of bonds to be issued;
 - (3) the maximum rate of interest;
 - (4) the purpose or purposes of the issue;
 - (5) the date the issue will bear;
 - (6) the period of time through which the issue will be paid;
 - (7) the manner of execution of the bonds:
- (8) that amortization bonds will be preferred but also fix the denomination of serial bonds; and
 - (9) the date and time that the sale of the bonds shall be conducted.

History: En. 75-7118 by Sec. 319, Ch. 5, L. 1971.

Bond Sale Resolution

School bond election was not invalid for failure of elerk to set out in full in minute books of board of trustees resolution authorizing sale of bonds, in absence of showing that resolution itself was defective since minute books need not reflect exact contents of resolution. Elliot v. School District No. 64-JT, 149 M 299, 425 P 2d 826.

Delay in Resolution for Bond Issue

Delay in the issuance of bonds, occasioned by litigation and negotiations with the federal government in the financing

thereof under National Recovery Act, did not affect the legality of original authority voted by the district, requirement to proceed within sixty days being directory, not mandatory. State ex rel. Sullivan v. School District No. 1, 100 M 468, 475, 50 P 2d 252.

Mandamus To Compel Issuance of Bonds

Court would not compel board to issue bonds for construction of school where board was making good faith effort to solve financial aspects of building proposed school; litigation which was instituted to test validity of bond election suspended running of sixty-day period in statute. State ex rel. Tilzey v. School District No. 44, 149 M 509, 428 P 2d 974.

75-7119. Notice of sale of school district bonds. The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued, and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No of
County, state of Montana, that the said trustees will on the
day of
, in the said school district, sell to the highest and best bidder
for cash, either amortization or serial bonds of the said school district in
the total amount of dollars (\$), for the purpose of
•

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of years from the date of issue.

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. Such bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the said bonds at private sale.

All bids should be addressed to the undersigned district.

Chairman,	School	District	No.	****
of	Coun	ty		

ATTEST:

Notary Public for the State Residing at, Montana.

My Commission expires.....

History: En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971.

Compiler's Note
The 1971 amendment, apparently by

oversight, did not delete the bracketed matter in the fourth paragraph concerning issuance of serial bonds.

75-7120. Publication of notice of sale of school district bonds. The trustees shall cause a copy of the notice of sale of the bonds to be:

(1) published once a week for four successive weeks preceding the date of the sale in a newspaper as determined by the trustees;

- (2) published once, not less than thirty (30) days prior to the date of sale, in some daily newspaper of the state that has a general circulation throughout the state when the bond issue to be sold is ten thousand dollars (\$10,000) or more; and
 - (3) sent to the state board of land commissioners.

If the bond issue to be sold is ten thousand dollars (\$10,000) or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York.

History: En. 75-7120 by Sec. 321, Ch. 5, L. 1971.

Failure To Advertise

Failure to cause notice of sale of bonds

to be published in New York City newspaper was no reason for invalidating bond election and subsequent bond issue. Elliot v. School District No. 64-JT, 149 M 299, 425 P 2d 826.

75-7121. Sale of school district bonds. The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par and accrued interest and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind, but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. No attorney fees, brokerage or other fees, or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the school district except that such bonds shall not be sold at less than par and accrued interest.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971.

Collateral References

Schools and School Districts \$97(5).
79 C.J.S. Schools and School Districts \$370 et seq.

43 Am. Jur. 373 et seq., Public Securities and Obligations, § 126 et seq.

Sale of municipal or other public bonds at less than par or face value, 91 ALR 7 and 162 ALR 396.

75-7122. Form and printing of school district bonds. It shall not be necessary for the trustees to prescribe the detailed form of the bonds to be issued but the bonds must conform to all legal requirements for their payment, whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with chapter 13 of Title 59, R. C. M., 1947. If the bonds are purchased by the state board of land commissioners, all payments of principal or interest shall be made at the office of the state treasurer.

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The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates.

History: En. 75-7122 by Sec. 323, Ch. 5, L. 1971.

Collateral References
Schools and School Districts 97(6).
79 C.J.S. Schools and School Districts

371.

75-7123. Registration of school district bonds by county treasurer and copy for preservation. When the school district bonds have been duly executed by the chairman of the trustees and the school district clerk, all such bonds shall be registered by the county treasurer in his bond registration book before such bonds are delivered to the purchaser. The bond registration shall show the number and amount of each bond, the date of issue, the redeemable date of each bond, the name of the purchaser, and the amount and due date of all payments required on the bonds.

The trustees shall provide the county treasurer with an unsigned and canceled printed copy of each issue of school district bonds for preservation in the office of the county treasurer.

History: En. 75-7123 by Sec. 324, Ch. 5, L. 1971.

Collateral References

79 C.J.S. Schools and School Districts § 368.

75-7124. Delivery of school district bonds and disposition of moneys realized from sale. After the school district bonds have been registered, the county treasurer shall:

- (1) when the state board of land commissioners has purchased such bonds, forward the bonds to such state board which, in turn, shall cause the bonds to be sent to the state treasurer and shall cause the bonds to be paid for in the manner provided by law; or
- (2) when the purchaser is anybody other than the state board of land commissioners, deliver the bonds to such purchaser when full payment of the bonds has been made by the purchaser.

If any of the trustees shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds, he shall be deemed guilty of a felony. If convicted, he shall be punished by imprisonment in the state prison for not less than one (1) year nor more than ten (10) years.

All moneys realized from the sale of school district bonds shall be paid to the county treasurer and he shall credit such moneys to the building fund of the school district issuing such bonds; except moneys realized for the purposes defined in subsection (5) and (6) of section 75-7103 shall be deposited in the debt service fund for the purchase of such bonds. The moneys realized from the sale of school district bonds shall be immediately available to such school district and the trustees may expend such moneys without budgeted authorization for the purpose or purposes, but only for such purposes, for which the bonds were authorized by the school district bond election. Under the provisions of subsection (2) of section 16-2050, R. C. M., 1947, the trustees may invest such moneys for which there is no immediate demand and the interest earned by such investment shall be used in the manner provided therein. After the full accomplishment of the

purpose or purposes of a bond issue, the excess moneys realized from such bond issue shall be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of such issue.

History: En. 75-7124 by Sec. 325, Ch. 5, L. 1971.

75-7125. County attorney to assist in the proceedings. The trustees of any school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of his county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the state board of land commissioners, he shall carefully examine such transcript, and the transcript shall not be sent until he has attached his opinion to the transcript that the proceedings are in full compliance with law. The trustees of any school district, however, may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of his duties.

History: En. 75-7125 by Sec. 326, Ch. 5, L. 1971; amd. Sec. 1, Ch. 263, L. 1971.

Collateral References

District and Prosecuting Attorneys > 3. 27 C.J.S. District and Prosecuting Attorneys § 10, 12(1).

75-7126. School district liable on bonds. The full faith, credit and taxable resources of every school district issuing bonds under the provisions of this Title are hereby solemnly pledged for the repayment of such bonds with interest according to their terms. For the purpose of making the provisions of this act enforceable every school district is hereby declared to be a body corporate which may sue and be sued by or in the name of the trustees of such school district.

History: En. 75-7126 by Sec. 327, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 97(10). 79 C.J.S. Schools and School Districts \$375.

75-7127. Preparation of debt service fund budget. The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with section 75-6707 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees. The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of section 75-6710. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the

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county superintendent shall be the final budget expenditure amount for the debt service fund of such school district.

History: En. 75-7127 by Sec. 328, Ch. 5, L. 1971.

- 75-7128. Computation of net levy requirement for debt service fund and proceedings if board of county commissioners fail to make adequate levy. The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:
- (1) Determine the total moneys available in the debt service fund for the reduction of the property tax on the district by totaling:
- (a) the end-of-the-year cash balance, less any outstanding warrants in the debt service fund;
- (b) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of subsection (4) of section 75-6806 or by the investment of bond proceeds under the provisions of section 75-7124; and
- (c) any other moneys anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income.
- (2) The total amount available to reduce the property tax, determined in subsection (1), shall be subtracted from the final budget expenditure amount for the debt service fund as established in section 75-7127.
- (3) The net debt service fund levy requirement determined in subsection (2) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with section 75-6717.

If the board of county commissioners shall fail in any school fiscal year to make a levy for any issue or series of bonds of any school district sufficient to raise the moneys necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in such amounts as are established under the provisions of this section, the holder of any bond of such issue or series or any taxpayer of the district may apply to the district court of the county in which such school district is located for a writ of mandate to compel the board of county commissioners of such county to make a sufficient levy for such purposes. If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board of county commissioners of such county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of such deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes. to fix and make a levy against all taxable property in such school district that is sufficient to raise the amount of such deficiency. Such levy shall be in addition to any levy required to be made at that time for the then ensuing school fiscal year. Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners, and shall not be a charge against the school district or the county.

History: En. 75-7128 by Sec. 329, Ch. 5, L. 1971.

Collateral References

Schools and School Districts \$\infty 97(10), 108(4).

79 C.J.S. Schools and School Districts \$\§ 375, 408.

75-7129. Payment of debt service obligations by county treasurer and termination of interest. The county treasurer shall maintain a separate debt service fund for each school district, and shall credit all tax moneys collected for debt service to such fund and use the moneys credited to such fund for the payment of debt service obligations in accordance with the school financial administration provisions of this Title.

The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as such interest or principal becomes due when the coupons or bonds are presented and surrendered for payment. If the bonds are held by the state of Montana, then all payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return such coupons or bonds to the county treasurer with his receipt. If the bonds are not held by the state of Montana, and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

Whenever any school district bond, or installment on school district bonds, shall become due and payable, interest shall cease on such date unless sufficient funds are available to pay such bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on such bond or installment shall continue until payment is made.

Any installment on interest and principal on bonds held by the state, that is not promptly paid when due, shall draw interest at an annual rate of six per cent (6%) from the date due until actual payment, irrespective of the rate of interest on the bonds.

History: En. 75-7129 by Sec. 330, Ch. 5, L. 1971.

Cross-Reference

Payment of county school bonds, sec. 75-7137.

Collateral References

Schools and School Districts \$97(9).
79 C.J.S. Schools and School Districts \$374.

43 Am. Jur. 482 et seq., Public Securities and Obligations, § 271 et seq.

75-7130. Redemption of bonds and investment of debt service fund moneys. Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of such school district held by the state of Montana, the county treasurer

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shall apply such money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice not less than thirty (30) days before the next interest due date to the state board of land commissioners that on such interest due date such bond or bonds will be paid. Before such interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bond or bonds that are being redeemed and the interest due on such bonds. When the state treasurer receives such payment, he shall cancel such bond or bonds and any unpaid coupons of such bonds, and return the canceled bonds and coupons to the county treasurer.

Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of such school district not held by the state of Montana, not yet due but then redeemable, or becoming redeemable on the next interest due date, the county treasurer shall apply such available money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bond or bonds, if known to him, or to any bank or financial institution at which the bonds are payable, at least thirty (30) days before the next interest due date, that the bond or bonds will be paid and redeemed on such date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before such interest due date, an amount sufficient to pay and redeem the bond or bonds. If the bond or bonds are not presented for payment and redemption on such interest due date, the accrual of interest shall cease on such interest due date.

Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of such school district may direct the county treasurer to purchase such bond or bonds of the district if this can be done at not more than par and accrued interest or at such reasonable premium as the trustees may feel justified in paying but in no case exceeding six per cent (6%).

Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund moneys shall be invested by the trustees under the provisions of subsection (4) of section 75-6806. Such investments shall be sold in ample time before the debt service fund moneys are required for the payment of the bonds of the school district.

History: En. 75-7130 by Sec. 331, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 597(9). 79 C.J.S. Schools and School Districts 374.

75-7131. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on his bond registration record and shall promptly notify the clerk of the school district when such payments are made. The county treasurer also shall deliver the canceled coupons and bonds to

the county clerk at the end of each month. The county clerk shall file such canceled coupons and bonds in his office.

History: En. 75-7131 by Sec. 332, Ch. 5, L. 1971.

75-7132. Disposition of moneys remaining in debt service fund. When all of the bonds and bond interest of any school district have been fully paid, all money remaining in the debt service fund for such school district and all moneys which may come into such debt service fund from the payment of the delinquent taxes shall be transferred by the county treasurer to the general fund of such school district.

History: En. 75-7132 by Sec. 333, Ch. 5, L. 1971.

75-7133. County bonding for county high school not placed in high school district. Sections 75-7134 through 75-7138 shall be used for the purposes of indebting a county for county high school facilities when the county high school in such county has not been placed in a high school district by the high school boundary commission of the county. The provisions of such sections shall not be available to any county high school that has been placed in a high school district or to any other high school or district.

History: En. 75-7133 by Sec. 334, Ch. 5, L. 1971.

- 75-7134. Purposes and petition for county high school bonds. Any county where a county high school that has not been placed in a high school district is located may become indebted by the issuance of bonds for the purposes of:
- (1) purchasing or erecting a building or buildings for high school purposes;
- (2) remodeling, enlarging, or repairing a building or buildings for high school purposes;
 - (3) purchasing equipment for high school purposes;
- (4) purchasing, erecting, or equipping a high school dormitory or gymnasium;
 - (5) purchasing a suitable site or sites for such high school building; or
- (6) refunding or redeeming any outstanding bonds originally issued for any of the foregoing purposes.

In order to initiate any bonding proposition for the above purposes, a petition signed by not less than twenty per cent (20%) of the electors of the county who are qualified under section 75-6410 shall be presented to the trustees of the county high school. Such petition shall request the submission of a bond proposition to the qualified electors of the county, and shall specify the purpose or purposes of the proposed bond issue and the amount of bonds to be issued. Such petition shall conform with the petition requirements prescribed in section 75-7112. If the trustees of the county high school approve a validated petition for a bond proposition,

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they shall request the board of county commissioners of the county to submit such bond proposition to the qualified electors of the county.

History: En. 75-7134 by Sec. 335, Ch. 5, L. 1971; amd. Sec. 12, Ch. 83, L. 1971.

Collateral References

Schools and School Districts 97(1),

79 C.J.S. Schools and School Districts §§ 359, 360, 365, 366.
43 Am. Jur. 309 et seq., Public Securi-

ties and Obligations, § 52 et seq.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein. 119 ALR 190.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes. 124 ALR 883.

75-7135. Duty of board of county commissioners to call election and issue bonds. Immediately upon the receipt of any bond proposition request from the trustees of the county high school, it shall be the duty of the board of county commissioners to submit such question to the qualified electors of the county in the manner otherwise provided by law for the submission of the proposition of the issuance of other county bonds. If a majority of the qualified electors of the county, voting upon the proposition so submitted, shall approve such issue, then the board of county commissioners shall issue and market the bonds authorized as in the case of other county bonds.

History: En. 75-7135 by Sec. 336, Ch. 5, L. 1971.

Collateral References Schools and School Districts 97(4).

79 C.J.S. Schools and School Districts **§ 366.**

Rescission of vote authorizing school district or other municipal bond issue, expenditure or tax. 68 ALR 2d 1041.

75-7136. Proration of county bond proceeds between high schools of the county. In any county where a county high school is located and such county high school is not located in a county that has been divided into high school districts and another high school is maintained by an elementary district of the county, bonds of the county may likewise be issued in accordance with the provisions of sections 75-7134 and 75-7135. The proceeds of such issue shall be divided among the county high school and the districts maintaining a high school. The question submitted to the electors of the county shall state the amount which is to be allotted to the county high school and the amount which is to be apportioned to or among such districts. In all such cases, the amount allotted to the county high school and the amount to be apportioned among the districts shall be computed upon the basis of the taxable valuation of the county that is used for county high school property taxation purposes and the taxable valuation of the districts maintaining a high school. Any such bond moneys apportioned to a district shall not be expended until the purpose for the expenditure has been approved by a vote of the qualified electors at an election held in the same manner prescribed for a school district bond

History: En. 75-7136 by Sec. 337, Ch. 5,

Bond Issues To Match Federal Funds

schools did not apply where to require division of the proceeds would in effect destroy the purpose of Ch. 115, Laws 1937 (omitted) which was to enable the borrowing body to match federal funds, Former statute relating to apportion rowing body to match federal funds, ment between county and district high available only for the erection of buildings and public works, and where the district provements. Hendrickson v. Powell Counhigh schools were not in need of such im-

75-7137. Payment of county bonds. All bonds authorized and issued for a county high school not located in a high school district shall be paid, both principal and interest, in the manner provided by law for the payment of other bonds of the county.

History: En. 75-7137 by Sec. 338, Ch. 5, L. 1971.

79 C.J.S. Schools and School Districts § 374.

Collateral References

Schools and School Districts 97(9).

43 Am. Jur. 482 et seq., Public Securities and Obligations, § 271 et seq.

75-7138. Budget prohibition when county bonds issued. In all cases where bonds of the county are issued for county high school purposes, the trustees of the county high school shall not budget for any item of expense or disbursement for the purposes for which such county bonds have been issued.

History: En. 75-7138 by Sec. 339, Ch. 5, L. 1971.

CHAPTER 72

ELEMENTARY TUITION AND SPECIAL PURPOSE FUNDS

Section 75-7201. Elementary tuition rates.

75-7202. End of term tuition report and notification of resident elementary

75-7203. Budgeting, levy requirement and paying elementary tuition.

75-7204. Retirement fund.

75-7205. Purpose and authorization of a building reserve fund by an election. 75-7206. Budgeting, tax levy and use of the building reserve fund.

75-7207. Adult education fund.
75-7208. Post-secondary vocational-technical center fund. 75-7209. Purpose and establishment of nonoperating fund.

75-7210. Budgeting and net levy requirement for nonoperating fund.

75-7211. School food services fund.

75-7212. Miscellaneous federal programs fund.

75-7213. Building fund.

75-7214. Housing and dormitory fund.

75-7215. Traffic education fund.

75-7216. Interlocal co-operative agreement fund.

- 75-7201. Elementary tuition rates. Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of section 75-6313 or 75-6314, such district shall pay tuition to the elementary district where the pupil attends school on the basis of the following schedule:
- two hundred seventy-five dollars (\$275) per pupil when the ANB of the attended school is one hundred (100) or less:
- two hundred fifty dollars (\$250) per pupil when the ANB of the attended school is more than one hundred (100) but less than three hundred one (301); or
- two hundred twenty-five dollars (\$225) per pupil when the ANB of the attended school is three hundred one (301) or more.

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History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971.

Collateral References

Schools and School Districts = 159.
79 C.J.S. Schools and School Districts
\$\ \\$\ 457, 461.
47 Am. Jur. 409, Schools, \\$\ 154.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 72 ALR 499 and 113 ALR 177.

75-7202. End of term tuition report and notification of resident elementary district. At the close of the school term of each school fiscal year and before the fifteenth (15th) day of July, the trustees of each elementary district shall report to the county superintendent:

- (1) the names of the pupils attending the schools of the district under an approved tuition agreement with the district of residence of each pupil;
 - (2) the number of days of school attended by each pupil; and
- (3) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, may waive. Any waiver of tuition shall be applied equally to all pupils.

When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside. In turn, every county superintendent shall notify each elementary district of his county of the tuition amounts owed to other elementary districts of the county or outside of the county. Such amounts shall be established from the tuition rate stated in each pupil's tuition agreement and from the information reported by the district in which the pupil attended school. No tuition shall be due when a pupil attends less than forty (40) days of school in such district.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971.

75-7203. Budgeting, levy requirement and paying elementary tuition. The tuition amount that has been established in section 75-7201 shall be paid during the ensuing school fiscal year. The trustees of the elementary district shall include such amount in the tuition fund of the preliminary budget. If the trustees should fail to include such amount or any portion of it in the preliminary budget, the budget board shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. Such adjustment shall not be subject to the budget adjustment provisions of section 75-6714.

The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with section 75-6717. Such levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget, the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated moneys that may be realized in the tuition fund.

The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of section 75-7201. Such payments shall be made whenever there is a sufficient amount of cash available in the tuition fund, but no later than the end of the school fiscal year for which the budget was adopted.

History: En. 75-7203 by Sec. 342, Ch. 5, L. 1971.

75-7204. Retirement fund. The trustees of any district employing personnel who are members of the teachers retirement system or the public employees retirement system shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such retirement systems. The district's contribution for each employee who is a member of the teachers retirement system shall be calculated in accordance with section 75-6207. The district's contribution for each employee who is a member of the public employees retirement system shall be calculated in accordance with section 68-603, R. C. M., 1947.

The trustees of any district required to make a contribution to either retirement system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such retirement systems in accordance with the financial administration provisions of this Title.

When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

- (1) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:
- (a) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year; and
- (b) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than thirty-five per cent (35%) of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.
- (2) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (1) from the budgeted amount for expenditures in the final retirement fund budget.

The net retirement fund levy requirement for each elementary district shall be reported to the county commissioners on the second Monday of August by the county superintendent, and a levy on each elementary district shall be made by the county commissioners in accordance with section 75-6717.

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The county superintendent shall total the net retirement fund levy requirements of all high school districts of the county, including any prorated joint high school district levy requirements, and shall report such levy requirement to the county commissioners on the second Monday of August as the county levy requirement for high school district retirement funds. The county commissioners shall fix and set such county levy in accordance with section 75-6717.

The net retirement fund levy requirement for a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the high school ANB of the joint high school district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in section 75-6721.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971.

Cross-References

Public employees retirement system, sec. 68-101 et seq.

Teachers retirement system, sec. 75-6201 et seq.

Collateral References

Schools and School Districts 216-19, 146.

78 C.J.S. Schools and School Districts $\S\S\ 17\text{-}22,\ 235.$

75-7205. Purpose and authorization of a building reserve fund by an election. The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping or enlarging of school buildings or other buildings needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

- (1) the purpose or purposes for which the new or addition to the building reserve will be used;
- (2) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;
- (3) the total amount of money that will be raised during the duration of time specified in subsection (2); and
- (4) any other requirements under section 75-6406 for the calling of an election.

The total amount of building reserve when added to the outstanding indebtedness of the district shall not be more than five per cent (5%) of the value of the taxable property of the district. Such limitation shall be determined in the manner provided in section 75-7104. A building reserve tax authorization shall not be for more than twenty (20) years.

The election shall be conducted in accordance with the school election laws of this Title and the electors qualified to vote in the election shall be qualified under the provisions of section 75-6410. The ballot for a building reserve proposition shall be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO."

	BUILDING	RESERVE—YES.
П	BUILDING	RESERVE—NO.

The building reserve proposition shall be approved if a majority of those electors voting at the election approve the establishment of or addition to such building reserve. The annual budgeting and taxation authority of the trustees for a building reserve shall be computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve shall lapse when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve shall be used for such purpose or purposes before any money realized by the bond issue is used.

History: En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971.

75-7206. Budgeting, tax levy and use of the building reserve fund. Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include such authorized amount in the building reserve fund of the preliminary budget. The county superintendent shall report such amount as the building reserve fund levy requirement to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with section 75-6717.

The trustees of any district maintaining a building reserve fund shall have the authority to expend moneys from such fund for the purpose or purposes for which it was authorized without such specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to commence the authorized projects. Such expenditures shall not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

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Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest such money in accordance with subsection (4) of section 75-6806. The interest earned from the investment shall be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for such fund.

History: En. 75-7206 by Sec. 345, Ch. 5, L. 1971.

75-7207. Adult education fund. Whenever the trustees of any district establish an adult education program under the provisions of section 75-7513, they shall establish an adult education fund under the provisions of section 75-7515. The adult education fund shall be the depository for all federal, state and district moneys received by the district in support of the adult education program.

The trustees of any district may authorize the levy of a tax of not more than one (1) mill on the district for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by such levy. The approval of the superintendent of public instruction shall have been acquired by the trustees before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for such approval.

Whenever the trustees of any district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of such program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget shall be made in accordance with the financial administration provisions of this title for a budgeted fund.

When a tax levy for an adult education program which has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report such levy requirement to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with section 75-6717.

History: En. 75-7207 by Sec. 346, Ch. 5, L. 1971.

75-7208. Post-secondary vocational-technical center fund. Whenever an approved post-secondary vocational-technical center under the provisions of section 75-7707 is operated within a district, the trustees of such district shall establish a post-secondary vocational-technical center fund. All moneys prescribed and received under the provisions of section 75-7709 shall be credited to the post-secondary vocational-technical center fund. The expenditure of the moneys deposited in the post-secondary vocational-education center fund shall be made under the budget and for the programs approved by the board of education under the provisions of section 75-7708 and the financial administration provisions of this Title.

The approval of the post-secondary vocational-technical center budget and subsequent revision or amendment of such budget by the board of education shall constitute the final budget approval and the inclusion of such fund in the district's preliminary budget and the final budget, approved by the budget board, shall not be required.

Whenever the county tax prescribed in subsection (2) of section 75-7709 is to be used in support of the post-secondary vocational-technical center fund budget, the county commissioners are authorized to levy such tax on the county in accordance with the provisions of section 75-6717.

History: En. 75-7208 by Sec. 347, Ch. 5, L. 1971.

75-7209. Purpose and establishment of nonoperating fund. The trustees of any district that will not operate any school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of such school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year cash balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However cash balances of the debt service fund and the miscellaneous federal programs fund, if any, shall be maintained in their individual funds.

The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund cash balance as a nonoperating fund cash reserve when they anticipate the reopening of a school in the following school fiscal year. Such cash reserve shall not be more than the general fund cash reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund cash reserve shall terminate and the moneys earmarked as a cash reserve shall be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of section 75-6602 or 75-6603 and operate such school, the nonoperating fund cash reserve shall be restored as the general fund cash reserve.

The purpose of the nonoperating fund shall be to centralize the financing and budgeting for the limited functions of a district not operating a school. Such functions shall include:

- (1) elementary tuition obligations to other districts;
- (2) transportation of the resident pupils;
- (3) maintenance of district owned property; and
- (4) any other nonoperating school function of the district deemed necessary by the trustees or required by law.

Any expenditure of nonoperating fund moneys shall be made in accordance with the financial administration provisions of this Title for a budgeted fund.

History: En. 75-7209 by Sec. 348, Ch. 5, L. 1971.

75-7210 SCHOOLS

75-7210. Budgeting and net levy requirement for nonoperating fund. The trustees of any district which does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a non-operating school district budget in accordance with the school budgeting provisions of this Title. Such nonoperating budget shall contain the non-operating fund and, when appropriate, a debt service fund. The nonoperating budget form shall be promulgated and distributed by the superintendent of public instruction under the provisions of section 75-6704.

After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for such fund by subtracting from the amount authorized by such budget the sum of:

- (1) The end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of section 75-7209;
- (2) the estimated state and county transportation reimbursements; and
- (3) any other moneys that may become available during the ensuing school fiscal year.

The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of section 75-7128 to the county commissioners on the second Monday of August, and such levies shall be made on the district by the county commissioners in accordance with section 75-6717.

History: En. 75-7210 by Sec. 349, Ch. 5, L. 1971.

75-7211. School food services fund. The trustees of any district offering school food services shall establish a school food services fund under the provisions of section 75-8005. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this Title for a nonbudgeted fund.

History: En. 75-7211 by Sec. 350, Ch. 5, L. 1971.

75-7212. Miscellaneous federal programs fund. The trustees of any district receiving federal moneys other than moneys under the provisions of Title I of Public Law 81-874 or federal moneys designated for deposit in a specific fund of the district shall establish a miscellaneous federal programs fund for the deposit of such federal moneys. Such federal moneys may be a reimbursement of expenditures already realized by the district, or may be a grant of moneys for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the federal moneys are a reimbursement, the moneys shall be expended at the discretion of the trustees for school purposes. When the federal moneys are a grant, the moneys shall be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous federal programs fund, the trustees shall cause a separate accounting to be main-

tained for each federal grant program and for the aggregate of all federal reimbursement moneys.

The financial administration of the miscellaneous federal programs fund shall be in accordance with the financial administration provisions of this Title for a nonbudgeted fund which shall be applied by individual federal grant programs or for the aggregate amount of the federal reimbursement moneys rather than on the basis of the total fund.

History: En. 75-7212 by Sec. 351, Ch. 5, L. 1971.

Compiler's Note

Public Law 81-874, referred to above, is compiled in the United States Code as Tit. 20, sees. 236 to 244.

75-7213. Building fund. The trustees of any district shall establish or credit the building fund whenever such district:

- (1) issues and sells bonds under the school district bonding provisions of this Title for purposes other than refunding bonds of the district;
- (2) receives federal money for the express purpose of building, enlarging or remodeling a school building or other building of the district;
- (3) sells property of the district in accordance with the law authorizing such sale;
- (4) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district;
- (5) earns interest from the investment of building fund moneys under the provisions of subsection (4) of section 75-6806 except interest earned from the investment of bond moneys under the provisions of section 75-7124 shall be credited to a fund in accordance with such section; or
- (6) receives any other moneys for the express purpose of building, enlarging or remodeling a school building or other building of the district.

The financial administration of the building fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund, and shall provide for a separate accounting of the moneys realized by each bond issue or by each construction project financed by a federal grant of moneys. Any other moneys to the credit of this fund shall be expended for building, enlargement, remodeling or repairing of buildings of the district at the discretion of the trustees.

Moneys credited to the building fund under the provisions of subsection (1) of this section shall be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of such bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold, shall be transferred to the debt service fund to be used for the redemption of bonds of such issue.

Moneys credited to the building fund under the provisions of subsection (2) of this section shall be expended for the express purpose or purposes authorized by the federal government in granting such moneys.

History: En. 75-7213 by Sec. 352, Ch. 5, L. 1971.

75-7214. Housing and dormitory fund. The trustees of any district that provides pupil or teacher housing in district owned buildings under a lease or rental agreement with pupils or teachers shall establish a housing and dormitory fund. All moneys received from such lease or rental agreements shall be deposited with the county treasurer to the credit of the housing and dormitory fund, general fund, or the debt service fund. Whenever the end-of-the-year cash balance of the housing and dormitory fund is more than three thousand dollars (\$3,000), such cash balance in excess of three thousand dollars (\$3,000) shall be transferred to the general fund of the district.

Any expenditure of moneys from the housing and dormitory fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971.

75-7215. Traffic education fund. The trustees of any district offering a state reimbursed traffic education program shall establish a traffic education fund under the provisions of section 75-7907. Such fund shall be a nonbudgeted fund and shall be financially administrated under the provisions of this Title for a nonbudgeted fund.

History: En. 75-7215 by Sec. 354, Ch. 5, L. 1971.

75-7216. Interlocal co-operative agreement fund. The trustees of any district serving as a prime agency under an interlocal co-operative agreement shall establish an interlocal co-operative fund under the provisions of section 75-7306 for the financial administration of the interlocal co-operative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this Title for a nonbudgeted fund.

History: En. 75-7216 by Sec. 355, Ch. 5,

CHAPTER 73

PUBLIC SCHOOL FUND, EDUCATIONAL CO-OPERATIVE AGREEMENTS AND GRANTS TO SCHOOLS

Section 75-7301. Public school fund.

75-7302. Title to farm mortgage lands vested in state and transfers validated.

75-7303. Acceptance and expenditure of federal moneys for state. 75-7304. Financial administration of interlocal co-operative agreement. 75-7303.

75-7305. Definitions of prime and co-operating agencies.

75-7306. District as prime agency.

District as co-operating agency.

Joint interstate school agreements.

75-7309. Gifts, legacies, devises and administration of endowment fund.

75-7301. Public school fund. The public school fund shall be maintained by the state treasurer as a subfund in the trust and legacy fund and the principal amount of such fund shall be irreducible and permanent. The following moneys shall be credited to such fund as an addition to the irreducible and permanent principal amount:

- (1) appropriations and donations by the state;
- (2) donations and bequests by individuals to the state or schools;
- (3) the proceeds of land and other property which revert to the state by escheat and forfeiture;
- (4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;
- (5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;
- (6) the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on such lands;
- (7) the principal of all moneys arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools;
- (8) the amount earmarked for deposit in this fund under the provisions of section 75-6907; and
 - (9) such other moneys as may be provided by the legislature.

History: En. 75-7301 by Sec. 356, Ch. 5, L. 1971.

Cross-References

Apportionment from fund, Const., Art. XI, sec. 5; sec. 75-6908.

Investment of public school fund, Const., Art. XI, sec. 3; sec. 81-1001 et seq.

Montana trust and legacy fund, Const., Art. XXI. Public school fund, Const., Art. XI, secs. 2. 3.

Collateral References

Schools and School Districts 17.
78 C.J.S. Schools and School Districts
18.

47 Am. Jur. 357 et seq., Schools, § 83 et seq.

DECISIONS UNDER FORMER LAW

State's Duty Toward Fund

Aware of its solemn trust, the legislature enacted Laws 1935, Ch. 127, § 1 (now repealed), specifically recognizing the liability of the state and acknowledging its obligation to keep inviolate the public

permanent school fund, and its guaranty to protect it against loss or diversion, including loss from investments in state farm loans (Const., Art. XI, sec. 3). Toole County Irrigation District v. State, 104 M 420, 437, 67 P 2d 989.

75-7302. Title to farm mortgage lands vested in state and transfers validated. The transfer of farm mortgage lands made by chapter 250, Laws of 1953, shall be deemed to have vested title in such lands in the state of Montana in trust for the state public school fund.

All contracts, certificates of purchase, deeds, and conveyances executed by the state of Montana in the administration of such lands since the effective date of chapter 250, Laws of 1953, shall be deemed sufficient in law to dispose of the right, title, and interest therein described by the state of Montana.

History: En. 75-7302 by Sec. 357, Ch. 5, L. 1971.

Compiler's Note

Chapter 250, Laws of 1953 (sec. 75-3729), referred to in this section, was repealed by Sec. 496, Ch. 5, Laws 1971.

75-7303 SCHOOLS

75-7303. Acceptance and expenditure of federal moneys for state. The governor and the superintendent of public instruction are hereby authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any Act of Congress of the United States, or otherwise, for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction with the state treasurer, and are hereby appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such expenditures shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time, but shall be continuously available to the superintendent of public instruction for expenditures consistent with this act and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971.

75-7304. Financial administration of interlocal co-operative agreement. Any district contracting with other districts or other public agencies to establish an interlocal co-operative agreement under the provisions of chapter 49, Title 16, R. C. M., 1947, shall be subject to the provisions of sections 75-7305, 75-7306 and 75-7307 for the purposes of the financial administration of such agreement.

History: En. 75-7304 by Sec. 359, Ch. 5, L. 1971.

75-7305. Definitions of prime and co-operating agencies. For the purposes of an interlocal co-operative agreement the prime agency shall be the district or other public agency vested with the financial administration of the interlocal co-operative agreement under the terms of such agreement and the co-operating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal co-operative agreement.

History: En. 75-7305 by Sec. 360, Ch. 5, L. 1971.

75-7306. District as prime agency. When the prime agency is a district, it is authorized and required to establish a nonbudgeted interlocal co-operative fund for the purpose of the financial administration of the interlocal co-operative agreement. All revenues received, including federal, state, or other types of grant payments in direct support of the agreement and the financial support provided by co-operating agencies, shall be deposited in such fund. All financial support of the agreement contributed by a district, designated as the prime agency, may be transferred to the inter-

local co-operative fund from any fund maintained by such district by resolution of the trustees. Any such transfer to the interlocal co-operative fund shall be used to finance those expenditures under the agreement which are comparable to those that are permitted by law to be made out of the fund from which the transfer was made, and which are within the final budget for the fund from which the transfer was made. No transfer shall be made from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction. All expenditures in support of the interlocal co-operative agreement shall be made from the interlocal co-operative fund established by the district which is the prime agency, except that expenditures in support of such agreement may be made from the miscellaneous federal programs fund when the express approval of the superintendent of public instruction is given.

History: En. 75-7306 by Sec. 361, Ch. 5, L. 1971.

Cross-Reference

Interocal co-operative agreement fund, sec. 75-7216.

75-7307. District as co-operating agency. When a district is the co-operating agency, it shall transfer its financial support under the interlocal co-operative contract to the prime agency by district warrant. The financial support may be provided from any fund maintained by the district. Any such fund utilized for the financial support of an interlocal co-operative agreement shall finance only those expenditures of such agreement that are comparable to those permitted under the statutory provisions creating such fund and such financial support must be within the currently adopted budget for such fund. No financial support shall be financed from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

History: En. 75-7307 by Sec. 362, Ch. 5, L. 1971.

75-7308. Joint interstate school agreements. The trustees of any district adjacent to another state may enter into a contract with a school district in such adjoining state to provide for the joint erection, operation and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed to by such districts and as are in accord with this section. Any such contract proposed for adoption by the trustees shall be in the form and contain only terms that may be prescribed by the superintendent of public instruction, and any such contract shall be approved by the superintendent of public instruction before it is considered by the electors of the district.

Before any contract negotiated under the provisions of this section shall be executed, the trustees shall call an election under the provisions of section 75-6406 and submit to the qualified electors of the district the proposition that such contract be approved and that the trustees execute such contract. No agreement shall be valid until it has been approved at an election. The electors at the election shall be qualified to vote under the provisions of section 75-6410 and the election shall be conducted under the school election provisions of this Title. The ballot for the election shall be substantially in the following form:

75-7309 SCHOOLS

PROPOSITION

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SCHOOL DISTRICT	NU.		 CU	OI	A T	1

 $\hfill \square$ For execution of contract

AGAINST EXECUTION OF CONTRACT

The trustees of any district executing a contract under this section shall have the power and authority to levy taxes and issue bonds for the purpose of erecting and maintaining the facilities authorized by this section. Furthermore, the facilities erected or maintained under this section may be located in either Montana or the adjoining state.

History: En. 75-7308 by Sec. 363, Ch. 5, L. 1971.

75-7309. Gifts, legacies, devises and administration of endowment fund. The trustees of any district shall have the authority and the power to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the donor, the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor or testator, when a district receives a gift, legacy or devise, the trustees shall deposit such gift, legacy, devise, or the proceeds therefrom in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss and only the income from such fund shall be appropriated for any purpose.

Unless the conditions of the endowment instrument require an immediate disbursement of such money, the money deposited in the endowment fund shall be invested by the trustees, notwithstanding the provisions of any other state law, in:

- (1) school district bonds of the district;
- (2) bonds of other school districts within the state;
- (3) first mortgage bonds, debentures, notes and other evidences of indebtedness issues, assumed or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes and other evidences of indebtedness are, at the time of such investment, within the three (3) highest quality grades for the rating of such bonds, debentures, notes and other evidences of indebtedness by any nationally recognized investment rating agency;
- (4) certificates of deposit of either Montana banks insured by the Federal Deposit Insurance Corporation; or
 - (5) direct obligations of the United States government.

All interest collected on such deposits or investments shall be credited to the endowment fund. No portion of the endowment fund shall be loaned

to the district nor shall any money of such fund be invested in warrants of the district.

Whenever any district has been abandoned, the endowment fund of such abandoned district shall be transferred and placed in the endowment fund in the district to which the territory is attached.

As the custodian of the endowment fund, the county treasurer shall be liable on his official bond for the endowment fund of any district of the county. No later than the first day of July of each school fiscal year, the county treasurer shall account to the trustees of each district on the condition of its endowment fund including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in his reports to the board of county commissioners.

The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district which become a part of the endowment fund.

History: En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971.

Collateral References Schools and School Districts 92. 79 C.J.S. Schools and School Districts § 331 et seq. 47 Am. Jur. 358, Schools, § 85.

CHAPTER 74

SCHOOL TERMS AND HOLIDAYS

Section 75-7401. Definition of pupil instruction. 75-7402. School fiscal year.

75-7403. School day.

75-7404. Conduct of school on Saturday or Sunday prohibited and exception.

75-7405. Pupil-instruction-related day.
75-7406. School holidays.
75-7407. Commemorative exercises on certain days.

75-7401. Definition of pupil instruction. As used in this Title, unless the context clearly indicates otherwise:

"Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

History: En. 75-7401 by Sec. 365, Ch. 5, L. 1971.

75-7402. School fiscal year. The school fiscal year shall begin on the first day of July and end on the last day of June. At least one hundred eighty (180) school days of pupil instruction shall be conducted during each school fiscal year. Any district that fails to provide for at least one hundred eighty (180) school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county.

75-7403

SCHOOLS

History: En. 75-7402 by Sec. 366, Ch. 5, L. 1971.

Cross-Reference

Post-secondary vocational-educational centers excepted, sec. 75-7711.

Collateral References

Schools and School Districts 162.
79 C.J.S. Schools and School Districts 483.

75-7403. School day. A school day of pupil instruction shall be at least two (2) hours for kindergartens and all other preschool programs, at least four (4) hours for grades one (1) through three (3), and at least six (6) hours for grades four (4) through twelve (12). The number of hours in a school day may be reduced, in an emergency, with the approval of the board of education.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 162.
79 C.J.S. Schools and School Districts
483.

75-7404. Conduct of school on Saturday or Sunday prohibited and exception. Except as provided, pupil instruction shall not be conducted on Saturday or Sunday. In emergencies pupil instruction may be conducted on a Saturday when it is approved by the superintendent of public instruction in accordance with the policies adopted by the board of education.

History: En. 75-7404 by Sec. 368, Ch. 5, L. 1971.

Collateral References

Schools and School Districts = 162, 79 C.J.S. Schools and School Districts § 483.

75-7405. Pupil-instruction-related day. A pupil-instruction-related day shall be a day of teacher activities devoted to improving the quality of instruction. Such activities may include, but are not limited to, in-service training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of seven pupil-instruction-related days may be conducted during a school year; provided that such days are approved by the superintendent of public instruction in accordance with the policy adopted by the board of education. Such days shall not be included as a part of the required minimum of one hundred eighty (180) days of pupil instruction.

History: En. 75-7405 by Sec. 369, Ch. 5, L. 1971.

75-7406. School holidays. Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

- (1) New Year's day (January 1),
- (2) Memorial day (last Monday in May),
- (3) Independence day (July 4),
- (4) Labor day (first Monday in September),
- (5) Veterans' day (fourth Monday in October),
- (6) Thanksgiving day (fourth Thursday in November),
- (7) Christmas day (December 25),

(8) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place.

When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 162. 79 C.J.S. Schools and School Districts 483.

75-7407. Commemorative exercises on certain days. All districts shall conduct appropriate exercises during the school day on the following commemorative days:

- (1) Lincoln's birthday (February 12),
- (2) Washington's birthday (February 22),
- (3) Arbor day (last Friday in April),
- (4) Flag day (June 14),
- (5) Citizenship day (September 17),
- (6) Columbus day (October 12),
- (7) Pioneer day (November 1),
- (8) Other days designated by the legislature or governor as legal holidays.

When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday.

History: En. 75-7407 by Sec. 371, Ch. 5, L. 1971.

CHAPTER 75

SCHOOL ACCREDITATION, CURRICULUM AND ADULT EDUCATION

Section 75-7501. Standards of accreditation.
75-7502. Accreditation of schools.
75-7503. Instruction in elementary schools.
75-7504. Instruction in junior high schools and high schools.
75-7505. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction.
75-7506. 75-7507. Kindergarten and preschool programs.
75-7508. Private music instruction.
75-7509. Conservation education.
75-7510. Supervised correspondence study.
75-7511. State visual, aural and other educational media library.
75-7512. Definition of adult education.
75-7513. Authorization to establish adult education program.
75-7514. Trustees' policies for adult education.
75-7515. Adult education fund.
75-7516. Adult education tuition and fees.
75-7517. School library required.
75-7518. Trustees' policies for school library.
75-7519. School library book selection.
75-7520. Reporting school library information.
75-7521. Sectarian publications prohibited and prayer permitted.

75-7501. Standards of accreditation. Standards of accreditation for all schools shall be adopted by the board of education upon the recommendations of the superintendent of public instruction.

History: En. 75-7501 by Sec. 372, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 164.
79 C.J.S. Schools and School Districts 485.

75-7502. Accreditation of schools. Every school year the conditions under which each elementary school, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971.

Mandamus To Accredit Three-Year High School

Granting writ of mandate to compel state board of education to accredit school

as three-year high school before obtaining approval of superintendent of public instruction was an invasion of board's discretionary power. State ex rel. School District No. 29 v. Cooney, 102 M 521, 525, 59 P 2d 48.

75-7503. Instruction in elementary schools. All elementary schools shall be taught in the English language. Instruction shall be given in reading, penmanship, mathematics, language arts, social sciences, science, health, physical education, music and art. Instruction may be given in additional subjects when approved by the trustees.

History: En. 75-7503 by Sec. 374, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 164, 79 C.J.S. Schools and School Districts \$485.

47 Am. Jur. 352 et seq., Schools, § 200 et seq.

Extent of legislative power with respect to attendance and curriculum in schools. 39 ALR 477 and 53 ALR 832.

39 ALR 477 and 53 ALR 832.

Power and duty of school authorities to maintain kindergartens or specialized departments. 70 ALR 1313.

75-7504. Instruction in junior high schools and high schools. All junior high schools and high schools shall be taught in the English language. Instruction shall be given in accordance with the requirements of the standards of accreditation adopted by the board of education. Such standards shall require instruction in English, American history, American government, mathematics, science, health and physical education. Instruction may be given in additional subjects when approved by the trustees.

History: En. 75-7504 by Sec. 375, Ch. 5, L. 1971.

Cross-Reference

Drug and alcohol abuse instruction, sec. 75-8904.

Collateral References

Schools and School Districts 164. 79 C.J.S. Schools and School Districts 485. 47 Am. Jur. 441 et seq., Schools, § 200 et seq.

75-7505. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent

of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. He may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. He may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides.

History: En. 75-7505 by Sec. 376, Ch. 5, L. 1971.

75-7506. Instructional assistance by superintendent of public instruction. The superintendent of public instruction shall, at the request of the district or county superintendent, assist the schools with the planning, implementation, operation, and evaluation of instruction through in-service training and individual consultation.

History: En. 75-7506 by Sec. 377, Ch. 5, L. 1971.

75-7507. Kindergarten and preschool programs. The trustees of an elementary school district may establish and operate a free kindergarten or other preschool programs for children between the ages of three (3) and six (6) years. When such kindergarten and preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of kindergarten and preschool programs shall not be supported by moneys available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971.

79 C.J.S. Schools and School Districts § 484.

Collateral References
Schools and School Districts 163.

Power and duty of school authorities to maintain kindergartens or specialized departments. 70 ALR 1313.

75-7508. Private music instruction. Schools may grant credit to pupils completing courses of private music instruction, conducted outside of school hours and at the pupils' own expense. The instruction shall be provided by a teacher holding a valid Montana teacher's certificate with a music endorsement. The district granting such credit shall provide adequate supervision for the instruction and shall determine the allowable credit for such courses.

History: En. 75-7508 by Sec. 379, Ch. 5, L. 1971.

Collateral References

Schools and School Districts == 164.
79 C.J.S. Schools and School Districts \$485.

75-7509. Conservation education. Instruction in conservation shall be given in all schools. The scope of the conservation education program shall be approved by the board of education upon the recommendations of the superintendent of public instruction and shall include a wide-spread understanding of conservation facts, principles, and attitudes. Such instruction shall not be a specific course but shall be integrated with the instruction in related courses.

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In order to complement the instruction in conservation, the separate units of the university system shall make available to all students in a teacher education program basic instruction in conservation education, and shall include instruction in conservation in their community or public service programs.

To further promote conservation education, all districts are encouraged to instruct pupils about the benefits of preserving the forests and the best methods of planting and conserving trees, and by permitting the pupils to assist in planting trees and shrubs on school grounds and elsewhere on Arbor Day.

History: En. 75-7509 by Sec. 380, Ch. 5, L. 1971.

Cross-Reference

Teacher preparatory courses in conservation education, sec. 75-8803. Collateral References

Schools and School Districts 164. 79 C.J.S. Schools and School Districts 485.

75-7510. Supervised correspondence study. The trustees of any district may provide supervised correspondence study for a pupil when it is impossible for him to attend a school due to the isolation of his residence or his mental or physical incapacity. Supervision of the correspondence course shall be provided by the district superintendent or the county superintendent, if there is no district superintendent.

History: En. 75-7510 by Sec. 381, Ch. 5, L. 1971.

75-7511. State visual, aural and other educational media library. A library of visual, aural and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction, subject to the approval of the board of education, on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state, and shall be made available to such schools and groups either on a charge-free loan or on a rental fee basis.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971.

75-7512. Definition of adult education. As used in this Title, unless the context clearly indicates otherwise, the term "adult education" means the instruction of persons sixteen (16) years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. This definition shall not include the instruction in post-secondary vocational-technical centers.

History: En. 75-7512 by Sec. 383, Ch. 5, L. 1971.

75-7513. Authorization to establish adult education program. The trustees of any district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide

both basic and secondary general education, vocational education, American citizenship education including courses in the English language and American history and government, or any other areas of instruction approved by the trustees.

History: En. 75-7513 by Sec. 384, Ch. 5, Tr. 1971.

Cross-Reference

Community college as district for adult education purposes, tax levy, sec. 75-8128.

75-7514. Trustees' policies for adult education. The trustees shall adopt such policies as are necessary for the supervision and administration of adult education when a program is established in the district.

History: En. 75-7514 by Sec. 385, Ch. 5, L. 1971,

75-7515. Adult education fund. A separate adult education fund shall be established when an adult education program is operated by a district or community college district. The financial administration of such fund shall comply with the budgeting, financing and expenditure provisions of the laws governing the schools.

History: En. 75-7515 by Sec. 386, Ch. 5, L. 1971.

Cross-Reference

Adult education fund, sec. 75-7207.

75-7516. Adult education tuition and fees. The trustees of a district or community college district shall have the authority to charge tuition for instruction and to charge fees for the use of equipment and materials. The amount of such tuition and fees shall be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees shall be deposited in the adult education fund.

History: En. 75-7516 by Sec. 387, Ch. 5, L. 1971.

75-7517. School library required. The trustees of each district shall establish and maintain a school library in each school of the district. Each school library shall comply with at least the minimum requirements of the standards of accreditation adopted by the board of education.

History: En. 75-7517 by Sec. 388, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 76.
78 C.J.S. Schools and School Districts 269.

Cross-Reference

Contracts with public library board of trustees, sec. 44-222.

75-7518. Trustees' policies for school library. The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district; provided that such use does not interfere with the regular school use of the library.

History: En. 75-7518 by Sec. 389, Ch. 5, L. 1971.

75-7519. School library book selection. School library books shall be selected by the district superintendent, or a principal if there is no district superintendent, subject to the approval of the trustees. In districts not employing a superintendent or principal, the trustees shall select the school library books on the basis of recommendations of the county superintend-

History: En. 75-7519 by Sec. 390, Ch. 5, L. 1971.

75-7520. Reporting school library information. The trustees shall report school library information requested by the superintendent of public instruction, by the board of education, or, when there is no district superintendent or principal, by the county superintendent.

History: En. 75-7520 by Sec. 391, Ch. 5, L. 1971.

75-7521. Sectarian publications prohibited and prayer permitted. No publication of a sectarian or denominational character shall be used or distributed in any school or be included in the school library. Instruction shall not be given in sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer.

History: En. 75-7521 by Sec. 392, Ch. 5, L. 1971.

Cross-References

Freedom of religion guaranteed, Const., Art. III. sec. 4.

Teaching of sectarian tenets or requiring attendance at religious service prohibited, Const., Art. XI, sec. 9.

Collateral References

Schools and School Districts 265. 79 C.J.S. Schools and School Districts § 486.

Release of public school pupils from attendance for purpose of attending religious education classes. 2 ALR 2d 1371.

Bible distribution or reading in public schools. 45 ALR 2d 742.

Wearing of religious garb by public schoolteachers. 60 ALR 2d 300.
Prayer in public schools. 86 ALR 2d

Prayer: what constitutes "prayer" under federal constitutional prohibition of prayer in public schools. 30 ALR 3d 1352.

CHAPTER 76

TEXTBOOKS

Section 75-7601. Definitions.

75-7602. Free textbook provisions.

75-7603. Textbook selection and adoption.

75-7604. Textbooks obtained from licensed textbook dealer.

75-7605. Licensing textbook dealers.

Filing textbooks with superintendent of public instruction. 75-7606.

75-7607. Notification and processing of complaint against a licensed textbook dealer.

75-7608. Penalty for doing business without textbook dealer's license.

Penalty for restricting competition.

75-7610. Penalty for offer or acceptance of emoluments or other inducements.

75-7611. Listing of textbooks on file with superintendent of public instruction.

75-7601. Definitions. As used in this Title, unless the context clearly indicates otherwise:

"Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

"Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

History: En. 75-7601 by Sec. 393, Ch. 5, L. 1971.

75-7602. Free textbook provisions. The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees. For the purpose of this section only, "textbooks" shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parent of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

History: En. 75-7602 by Sec. 394, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 168.

79 C.J.S. Schools and School Districts § 489.

47 Am. Jur. 444, Schools, § 204.

Furnishing free textbooks to sectarian school or student therein, 93 ALR 2d 986.

75-7603. Textbook selection and adoption. Textbooks shall be selected by the district superintendent or by the school principal, if there is no district superintendent. Such selections shall be subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

History: En. 75-7603 by Sec. 395, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 167.

79 C.J.S. Schools and School Districts § 487.
47 Am. Jur. 443 et seq., Schools, § 202 et seq.

75-7604. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer. Copies of such textbooks shall be on file in the textbook li-

History: En. 75-7604 by Sec. 396, Ch. 5, L. 1971.

Cross-Reference

School officers not to act as agents, sec. 75-8303.

75-7605. Licensing textbook dealers. Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement:

brary maintained by the superintendent of public instruction.

- (1) to file with the superintendent of public instruction copies of all textbooks to be offered for sale or adoption;
- (2) to guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools when the textbooks are

filed; except, that such prices may be reduced in accordance with this section;

- (3) to guarantee that, at no time, shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and
- (4) to reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than two thousand dollars (\$2,000) but not more than ten thousand dollars (\$10,000). The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: En. 75-7605 by Sec. 397, Ch. 5, L. 1971.

75-7606. Filing textbooks with superintendent of public instruction. Licensed textbook dealers shall file a copy of all textbooks, that are offered for sale or adoption to districts, in the textbook library maintained by the superintendent of public instruction. When a copy of a textbook is filed, it shall be accompanied by a sworn statement of the listed, uniform sale price in effect for schools, F.O.B. the shipping point.

Special or abridged editions of any books on file with the superintendent of public instruction which are supplied outside of Montana at a lower price than the price of the edition filed with the superintendent of public instruction, shall be made available to districts in Montana. The offering for sale or adoption of such special or abridged editions shall be subject to the same textbook filing requirement as any other textbook.

The fee for filing textbooks with the superintendent of public instruction shall be two dollars (\$2) for each textbook. Where several textbooks are filed by a licensed textbook dealer in the same subject and with the same series head for any one grade, the maximum fee shall be six dollars (\$6). Such moneys shall be deposited in the state treasury to the credit of the state general fund.

The filing of a textbook shall expire ten (10) years after the date of its filing. Textbooks may be refiled in accordance with the filing and fee payment provisions of this section.

History: En. 75-7606 by Sec. 398, Ch. 5, L. 1971.

- 75-7607. Notification and processing of complaint against a licensed textbook dealer. It shall be the duty of any district or county superintendent to notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:
- (1) offering to supply textbooks not filed with the superintendent of public instruction;
- (2) offering to sell textbooks at a higher price than the listed, uniform sales price filed with the superintendent of public instruction;
- (3) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States;
- (4) supplying textbooks inferior to the samples on file with the super-intendent of public instruction; or
- (5) in any other way, performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. Once the superintendent of public instruction has found that the licensed textbook dealer has violated any provision of this section and he fails to rectify his error within thirty (30) days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971.

75-7608. Penalty for doing business without textbook dealer's license. Any textbook dealer who shall sell, or offer for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of such misdemeanor, he shall be fined not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000).

History: En. 75-7608 by Sec. 400, Ch. 5, L. 1971.

75-7609. Penalty for restricting competition. At any time a licensed textbook dealer enters into any understanding, agreement or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, he shall forfeit his surety bond and textbook dealer's license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of such licensed textbook dealer and for revocation of his textbook dealer's license.

History: En. 75-7609 by Sec. 401, Ch. 5, L. 1971.

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75-7610. Penalty for offer or acceptance of emoluments or other inducements. No textbook dealer nor his agent shall offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption or purchase of textbooks.

No trustee, county superintendent or school employee shall accept any emolument or other inducement from a textbook dealer or agent of such dealer for the use of his influence in the selection, adoption or purchase of textbooks.

The violation of any provisions of this section shall constitute a misdemeanor. In addition, any trustee, county superintendent or school employee convicted of such misdemeanor shall be removed from his position.

Nothing in this section shall be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees.

History: En. 75-7610 by Sec. 402, Ch. 5, L. 1971.

Cross-Reference

Bribery of school officers, sec. 94-810.

75-7611. Listing of textbooks on file with superintendent of public instruction. By May first of each year, the superintendent of public instruction shall supply a list of the textbooks then on file in his office to all districts and county superintendents. The list shall show the textbook title and its listed, uniform sales price. Textbooks may be excluded from the list:

- (1) at the written request of the licensed textbook dealer;
- after the textbook has been listed on ten annual listings; or
- when the licensed textbook dealer's surety bond is no longer in (3)effect.

History: En. 75-7611 by Sec. 403, Ch. 5, L. 1971.

CHAPTER 77

VOCATIONAL AND TECHNICAL EDUCATION

Section 75-7701. Definitions. 75-7702. Duties of board of education.
75-7703. Duties of superintendent of public instruction as executive officer.
75-7704. District authorization to establish and maintain vocational education courses and programs. 75-7705. Acceptance of Acts of Congress for vocational education.

75-7706. State treasurer custodian of vocational education moneys.
75-7707. Post-secondary vocational-technical center designation.
75-7708. Program and budget categories for post-secondary vocational-technical center designation.

nical education centers.

75-7709. Sources of financing for post-secondary vocational-technical center budgets and board of education administration.

75-7710. Local administration. 75-7711. Exception to school ca

Exception to school calendar.

75-7712. Admission of pupils with priority to Montana residents. 75-7713. Waiver of tuition for Montana residents and setting nonresident

tuition rates.

75-7714. Pupil fees and disposition of collected fees.
75-7715. Lease or purchase of state property for post-secondary vocationaltechnical center purposes.

75-7701. Definitions. As used in this Title, unless the context clearly indicates otherwise:

"Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.

"Post-secondary vocational-technical education" means vocational-technical education of post-secondary vocational-technical pupils which is conducted by a post-secondary vocational-technical center or other programs as designated by the board of education. Post-secondary vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

"Post-secondary vocational-technical pupil" means a person who has completed or left school, is at least sixteen (16) years of age, and is available for study in preparation for entering the labor market, for re-entering the labor market, or for employment stability or advancement in employment.

"Post-secondary vocational-technical center" means a school used principally for the provision of post-secondary vocational-technical education to persons who qualify as post-secondary vocational-technical pupils. These centers are designated by the board of education upon direction by the legislature. All other public or private schools are hereby prohibited from using this title.

History: En. 75-7701 by Sec. 404, Ch. 5, L. 1971.

75-7702. Duties of board of education. The board of education shall be the governing board of the state of Montana for vocational education. The board of education shall adopt policies to effect the orderly development of a system of vocational education that is adaptable to changing needs, controlled to prevent unnecessary duplication, co-ordinated with federal guidelines and requirements for vocational education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of vocational education, the board of education policies shall include:

- (1) a state plan for such development;
- (2) standards for vocational education courses and programs;
- (3) instructor qualifications for vocational education courses and programs;
- (4) criteria for approval of vocational education courses and programs which are to receive financial assistance;
- (5) a basis for apportionment of all moneys appropriated by the legislature for vocational education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

- (6) a basis for apportionment of all moneys received by the state of Montana for vocational education from the federal government in accordance with the Acts of Congress;
- (7) a system of evaluation of vocational education which allows for consideration of the current and projected manpower needs and job opportunities; and
- (8) any other policy not inconsistent with public law and which is necessary for the proper operation of a system of vocational education.

History: En. 75-7702 by Sec. 405, Ch. 5, 79 C.J.S. Schools and School Districts § 485. 47 Am. Jur. 441, Schools, § 200.

Collateral References

Schools and School Districts 264.

- 75-7703. Duties of superintendent of public instruction as executive officer. The superintendent of public instruction shall be the executive officer of the board of education for the administration of all state and federal laws related to vocational education. As the executive officer, the superintendent of public instruction shall:
- (1) administer the vocational education policies adopted by the board of education;
 - (2) prepare curriculum guides for board of education adoption;
- (3) employ, with the confirmation of the board of education, the professional staff necessary for the state supervision and administration of vocational education;
- (4) report the status of vocational education in the state of Montana when requested by the board of education;
 - (5) keep all vocational education records in his office; and
- (6) provide vocational education supervisory and consultative assistance to districts.

History: En. 75-7703 by Sec. 406, Ch. 5, L. 1971.

Cross-Reference

Professional staff employed by superintendent of public instruction, sec. 75-5704.

75-7704. District authorization to establish and maintain vocational education courses and programs. The trustees of any district, community college district, or unit of the Montana university system may establish and maintain a vocational education course or program that complies with the vocational education standards adopted by the board of education. In order for a course or program to be eligible for state or federal financing, it shall be approved by the board of education.

History: En. 75-7704 by Sec. 407, Ch. 5, L. 1971.

75-7705. Acceptance of Acts of Congress for vocational education. The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the Act of Congress entitled "The Vocational Edu-

cation Act of 1963" and the "Vocational Education Amendments of 1968," and further hereby accepts and assents to the terms and provisions of all Acts of the Congress amendatory of "The Vocational Education Act of 1963," and to the terms and provisions of all other Acts of Congress which provide funds for the benefit of vocational education in Montana.

History: En. 75-7705 by Sec. 408, Ch. 5, L. 1971.

Compiler's Note

The Vocational Education Act of 1963

is compiled in the United States Code at Tit. 20, secs. 35 to 35n. The Vocational Education Amendments of 1968 are compiled at numerous places in Title 20.

75-7706. State treasurer custodian of vocational education moneys. The treasurer of the state of Montana is hereby designated as the custodian of all federal and state moneys designated, appropriated or apportioned for vocational education. All moneys received from any federal or state source for the establishment, operation or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the board of education, he shall disburse all moneys appropriated or received for vocational education.

History: En. 75-7706 by Sec. 409, Ch. 5, L. 1971.

Collateral References

Schools and School Districts = 18.
78 C.J.S. Schools and School Districts
19.

- 75-7707. Post-secondary vocational-technical center designation. Post-secondary vocational-technical centers shall be designated by the board of education only upon direction of the legislature. Applications for designation must be made in accordance with the following procedure:
- (1) The trustees of any high school district, of a county high school, of a community college district, or the governing board of any unit of the Montana university system may submit an application for designation of a post-secondary vocational-technical center to be operated by such trustees or governing board. The application for designation shall be submitted in accordance with the time, data and form requirements prescribed by the board of education. Applicant high school districts, county high schools, or community college districts shall be located in a county with a taxable valuation of at least forty-five million dollars (\$45,000,000).
- (2) Applications are to be presented to the superintendent of public instruction acting in his capacity as the executive officer for vocational education of the board of education. The superintendent of public instruction shall review the application and present it to the board of education along with his recommendations. The board of education shall then examine the application and recommendations of the superintendent of public instruction and either adopt the recommendations of the superintendent of public instruction or draft its own recommendations. The application, together with all recommendations shall be presented by the board of education to the next following legislative assembly.

The board of education shall recognize the presently designated postsecondary vocational-technical centers operated by the respective board of trustees of school district number 1 of Silver Bow County, high school 75-7708 SCHOOLS

district number 1 of Lewis and Clark County, high school district "A" of Cascade County, Missoula County high school, and high school district number 2 of Yellowstone County.

History: En. 75-7707 by Sec. 410, Ch. 5, L. 1971.

- 75-7708. Program and budget categories for post-secondary vocational-technical education centers. The board of education shall have the sole authority for the approval of the post-secondary vocational-technical education programs and their budgets. Such programs and budgets shall be placed into three categories defined as:
- (1) Maintenance and operation. The maintenance and operation category shall include programs and costs for instruction; vocational guidance and counseling; job placement; travel of pupils and personnel while engaged in a program; acquisition, maintenance, and repair of equipment; and the rental of necessary emergency facilities for not more than one year.
- (2) Construction. The construction category shall include the program and cost for construction of new buildings; acquisition, expansion, remodeling and alteration of existing buildings; site acquisition and improvements; architectural fees; and the purchase of initial equipment.
- (3) Ancillary services. The ancillary services category shall include the program and cost for the services and activities necessary to assure quality in the post-secondary vocational-technical center's instruction, such as supervision and administration of the center, program evaluation, special demonstration and experimental programs, and development of instructional materials and curriculum.

The trustees of the designated district or other governing board where the post-secondary vocational-technical center is located shall submit program proposals and the related budgets on the basis of these categories and in accordance with the program and budget approval procedure prescribed by the board of education.

History: En. 75-7708 by Sec. 411, Ch. 5, L. 1971.

- 75-7709. Sources of financing for post-secondary vocational-technical center budgets and board of education administration. The total of the budgets approved by the board of education together with the budget for the cost of state administration of the post-secondary vocational-technical centers shall constitute the total maximum approved, state-wide budget which shall be financed as follows:
- (1) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing post-secondary vocational-technical education in Montana.
- (2) The board of county commissioners of each county in which a designated post-secondary vocational-technical center is located is hereby authorized to levy a tax of not to exceed one (1) mill on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the post-secondary vocational-technical center located within the said county.

- (3) Designated post-secondary vocational-technical centers shall be eligible to receive such funds from the federal government as the board of education may provide pursuant to applicable Acts of Congress.
- (4) If the aggregate financing provided by the above sources of revenue does not provide one hundred per cent (100%) financing of the maximum approved, state-wide budget, the remaining deficiency shall be financed from any state funds appropriated by the legislature for post-secondary vocational-technical education.

The board of education shall direct the distribution of the funds specified in subsections (1), (3), and (4) of this section on the basis of the budgets approved by the board of education. The funds earned by the mill levy specified in subsection (2) of this section shall be credited by the county treasurer to the post-secondary vocational-technical center fund.

The board of education shall determine the amount of financing available from these four sources of revenue and may approve budgets for maintenance and operation, construction and ancillary services. The aggregate amount of the budgets so approved by the board of education for post-secondary vocational-technical centers shall not exceed the moneys determined to be available.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971.

Cross-Reference

Post-secondary vocational-technical center fund, sec. 75-7208.

75-7710. Local administration. The trustees or governing board of a post-secondary vocational-technical center shall administer such center according to the requirements of the laws of the state of Montana, the policies of the board of education, and the regulations of the superintendent of public instruction. If, in construing such laws, there is a conflict between the laws providing for post-secondary vocational-technical centers and any other laws governing the operation of schools, the former shall have the controlling authority.

History: En. 75-7710 by Sec. 413, Ch. 5, L. 1971.

75-7711. Exception to school calendar. The post-secondary vocational-technical center shall not be required to conform to the 180-day school calendar so that programs shorter or longer than this calendar may be offered.

History: En. 75-7711 by Sec. 414, Ch. 5, L. 1971.

75-7712. Admission of pupils with priority to Montana residents. Any person who qualifies as a post-secondary vocational-technical pupil as defined in this act shall be admitted to the post-secondary vocational-technical center of his choice except that pupils who qualify as residents of the state of Montana as hereafter defined shall be given priority in case enrollment limitations are caused by resource limitation.

History: En. 75-7712 by Sec. 415, Ch. 5, L. 1971.

75-7713 SCHOOLS

75-7713. Waiver of tuition for Montana residents and setting nonresident tuition rates. Tuition shall not be charged to any resident of the state of Montana by the governing board of any post-secondary vocational-technical center. However, nonresidents may be charged tuition at rates to be determined by the board of education. For the purposes of this section the eligibility of a student for resident status shall be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" shall be considered to refer to a person who has attended school or who was in attendance at a school.

History: En. 75-7713 by Sec. 416, Ch. 5, L. 1971.

75-7714. Pupil fees and disposition of collected fees. Fees for the use of equipment and material used in instruction may be charged by the trustees or other governing board of the post-secondary vocational-technical center. The board of education shall prescribe the basis and limitations for the charging of such fees.

Fees collected by the post-secondary vocational-technical center shall be deposited with the county treasurer in the fund designated by the superintendent of public instruction for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the board of education.

History: En. 75-7714 by Sec. 417, Ch. 5, L. 1971.

75-7715. Lease or purchase of state property for post-secondary vocational-technical center purposes. The state of Montana, acting by and through the board of education, is hereby empowered and authorized to enter into a lease agreement for a term not to exceed forty (40) years, in order to lease to a district operating a post-secondary vocational-technical center any building or lands owned by the state and financed in whole or in part by an appropriation made by the legislature of the state of Montana for the purpose of supporting the district's post-secondary vocational-technical center. The consideration necessary to support such a lease may be nominal.

The board of education is hereby authorized to transfer, or direct transfer of, title held by the state of Montana in buildings or lands financed in whole or in part by an appropriation by the state legislature, to a district operating a post-secondary vocational-technical center, at any time the board of education deems such transfer to be in the best interests of both the state and the district involved, provided that this authorization extends only to buildings or lands which are to be used by the district for post-secondary vocational-technical education purposes.

History: En. 75-7715 by Sec. 418, Ch. 5, L. 1971.

CHAPTER 78

SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN

Section 75-7801. Definitions.

75-7802. Conduct of special education to comply with board of education

75-7803. Duties of superintendent of public instruction.

75-7804. Co-operation of state agencies.

75-7805. Mandatory establishment of special education class.

Discretionary establishment of special education class or program. Petition of parents for establishment of special education class or 75-7806. 75-7807. program.

75-7808. Providing tuition in lieu of a special education class or program.

Out-of-state tuition for special education children.

75-7810.

75-7810. No tuition when attending a state institution.
75-7811. Determination of need for special education and approval of classes and programs by superintendent of public instruction.

Exclusion of children from special education class or program. 75-7812. 75-7813. Financial assistance for operation of special education class or

75-7814. Special education child eligibility for transportation.

75-7815. State transportation reimbursement for special education children. 75-7816. Financial assistance for under-six (6) year-old special education class or program.

75-7801. Definitions. As used in this Title, unless the context clearly indicates otherwise:

"Special education" means the type of instruction requiring special facilities or programs for mentally retarded or physically handicapped children.

A "mentally retarded child" means any child who is not capable of profiting from the regular instruction of a school because his mental ability is substantially below the mental ability of an average child of the same age. Mentally retarded children are classified as follows:

- (a) An "educable mentally retarded child" means a child who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of an eleven-year-old child, but not less than that of a seven-year-old child.
- A "trainable mentally retarded child" means a child who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old child and, for entrance into a training program, is capable of walking, of clean body habits, and of obedience to simple commands.
- A "custodial mentally retarded child" means a child who does not show a likelihood of attaining clean body habits, responsiveness to directions, or means of intelligible communication.

A "physically handicapped child" means a child who is capable of profiting from the regular instruction with the assistance of special equipment, special services, or transportation to compensate for physical disabilities such as, but not limited to, cardiac impairment, cerebral palsy, chronic health problems, or inadequate speech, hearing or vision.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971.

75-7802. Conduct of special education to comply with board of education policies. The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of education. These policies may include, but are not limited to, regulation of class size, class grouping, curriculum, methods of instruction, teacher qualifications, distances of travel to classes or programs, necessary equipment and other special services.

History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971.

75-7803. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and co-ordinate the conduct of special education in the state by:

- (1) recommending to the board of education for adoption of those policies necessary to establish a planned and co-ordinated program of special education in the state;
 - (2) administering the policies adopted by the board of education;
- (3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of education;
- (4) discovering through observation, examination or testing the children in the state who are in need of special education;
- (5) determining the type of instruction required by children needing special education and preparing appropriate curriculum guides for such instruction;
- (6) seeking appropriate medical, psychiatric, and psychological assistance from the state department of health and other public agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;
- (7) recommending to districts the type of special education class or program needed to serve the special education children of such district;
- (8) approving, as they are established or proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of education, and the regulations of the superintendent of public instruction;
- (9) providing supervision for and consulting with district superintendents, principals, teachers and trustees;
- (10) conducting conferences, offering advice and otherwise co-operating with parents and other interested persons; and
- (11) acting as the co-ordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education.

History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971.

Cross-Reference

Special education supervisor employed by superintendent of public instruction, sec. 75-5704.

Collateral References

Schools and School Districts 164.
79 C.J.S. Schools and School Districts
8 485.

75-7804. Co-operation of state agencies. The state department of health, the department of institutions, and the state school for the deaf and blind shall assist the superintendent of public instruction in discovering children in need of special education, in determining the type of special education for these children, and in generally supervising and co-ordinating special education in the state. Nothing herein shall be construed to interfere with the purpose and function of these state agencies.

History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971.

75-7805. Mandatory establishment of special education class. The trustees of any district shall establish and maintain at least one applicable special education class when there are ten (10) or more educable mentally retarded children in the district and at least one (1) applicable special education class when there are seven (7) or more trainable mentally retarded children in the district, and at least one (1) applicable special education class when there are ten (10) or more physically handicapped children in the district.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971.

75-7806. Discretionary establishment of special education class or program. The trustees of any district may establish and maintain a special education class or special education program for:

- (1) four (4) or more educable mentally retarded children;
- (2) four (4) or more physically handicapped children;
- (3) four (4) or more trainable mentally retarded children;
- (4) individual children requiring special education such as home or hospital tutoring, school-to-home telephone communication, or other individual programs; or
- (5) educable mentally retarded children, trainable mentally retarded children or physically handicapped children under the age of six (6) years of age when the superintendent of public instruction has determined that such programs will:
- (a) assist a child to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;
- (b) permit the conservation or early acquisition of skills which will provide the child with an equal opportunity to participate in the regular instruction of the district; or
- (c) provide other demonstrated educational advantages which will materially benefit the child; or
- (6) educable mentally retarded persons or physically handicapped persons who are not less than twenty-one (21) or more than twenty-five (25) years of age when the superintendent of public instruction has determined that such programs will assist a person to achieve levels of competence that will enable him to better participate in society.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971.

Compiler's Note

This section was amended twice in 1971, once by Ch. 122, § 1 and once by Ch. 123, § 2. Neither amendatory act mentioned

nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments. Ch. 122 added subd. (6); Ch. 123 inserted "trainable mentally retarded children" in subd. (5).

75-7807. Petition of parents for establishment of special education class or program. The parents of four (4) or more children needing special education of one type of educable mentally retarded children, trainable mentally retarded children or physically handicapped children may petition the trustees to establish a special education class or program. Parents residing in several contiguous districts may petition the trustees of each district to co-operatively establish a special education class or program of one type for four (4) or more children. The interlocal co-operative agreement authorized in chapter 49 of Title 16, R. C. M. 1947, shall be used to establish a multi-district special education class or program.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971.

75-7808. Providing tuition in lieu of a special education class or program. In lieu of providing special education in the district, the trustees may arrange for the attendance of a child in need of special education in a special education class or program approved by the superintendent of public instruction and offered in another district within the state of Montana. Attendance at such a class or program shall be approved or disapproved in accordance with the laws governing the attendance of pupils in schools outside of the district.

Whenever a child resides in one elementary district but has approval to attend a special education class or program of another Montana elementary district, the district in which the child resides shall pay the tuition to the elementary district operating the class or program in the same manner as, but at twice the tuition rate, prescribed in section 75-7201 for the payment of tuition.

Whenever a child has approval to attend a special education class or program of a Montana high school district outside his county of residence, the county in which the child resides shall pay the tuition to the high school district operating the class or program in the same manner as, but at twice the tuition rate, prescribed in section 75-6317 for the payment of tuition.

History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 79 C.J.S. Schools and School Districts §§ 459-461.

75-7809. Out-of-state tuition for special education children. The trustees of any district may arrange for the attendance of a child in need of special education in a special education class or program offered outside of the state of Montana. Attendance at such a class or program shall be

approved or disapproved by the trustees and the county superintendent for elementary classes or programs, or by the county superintendent for high school classes or programs. Such approvals shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

Whenever the attendance of a child at an out-of-state special education class or program is approved, the officials authorized to approve such attendance may negotiate the amount and manner of payment of tuition. The budgeting provisions of sections 75-7203 and 75-6317 shall apply to these payments of out-of-state tuition.

History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971.

75-7810. No tuition when attending a state institution. When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of institution officials such child attends classes conducted by a school within a local district, the district wherein the parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of section 75-7201 or section 75-7808, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training at the state institution. The schedule of transportation payments shall be approved in accordance with existing special education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971.

75-7811. Determination of need for special education and approval of classes and programs by superintendent of public instruction. The determination of the children requiring special education and the type of special education needed by these children shall not be the responsibility of the trustees but shall be the responsibility of the superintendent of public instruction. Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of education, and the regulations of the superintendent of public instruction. No special education class shall be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually.

History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971.

- 75-7812. Exclusion of children from special education class or program. No mentally retarded child or physically handicapped child shall be excluded from an approved special education class or program unless:
- (1) the enrollment of the class is the maximum amount approved by the superintendent of public instruction; or
- (2) the child's intellectual ability, age, or behavior pattern is not compatible with the class, as determined by the superintendent of public instruction with assistance of appropriate medical, psychiatric, or psychological advice.

In the event a child is excluded under subsection (2), the trustees shall notify the local welfare department and the proper authorities of the department of institutions who shall be charged with the responsibility for providing adequate protection and care, in keeping with available facilities, so far as the parents are willing to accept such services.

History: En. 75-7812 by Sec. 430, Ch. 5, L. 1971.

- 75-7813. Financial assistance for operation of special education class or program. When a special education class or program has been approved, the following provisions shall govern the computation of the financial assistance to which the operating district is entitled:
- (1) In establishing the amount of the maximum-general-fund-without-a-vote, the ANB shall be:
- (a) forty-five (45) for a mentally retarded or physically handicapped class of seven (7) or more children;
- (b) six (6) per child for a mentally retarded or physically handicapped class of not more than six (6) children but not less than four (4) children; or
- (c) determined from an ANB schedule prepared by the superintendent of public instruction for all other types of special education classes and programs. The ANB schedule shall be based on the time required and the degree of special education provided and shall not allow more than six (6) ANB for each special education child.
- (2) Whenever a new special education class or program is to be offered for the first time in the ensuing year and has been approved by the superintendent of public instruction prior to the adoption of the preliminary budget, an ANB based upon the estimated number of children to be enrolled in such class and determined according to the provisions in subsection (1) of this section may be used for the establishment of the foundation program and the permissive levy for the ensuing year.
- (3) When a pupil is enrolled for less than a school year in an approved special education class or program, the district operating the class or program shall compute the ANB in the manner provided by the superintendent of public instruction.

History: En. 75-7813 by Sec. 431, Ch. 5, L. 1971.

- 75-7814. Special education child eligibility for transportation. With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation when:
- (1) he is enrolled in a special education class or program operated by the district of such child's residence;
- (2) he is enrolled under an approved tuition agreement in a special education class or program operated by a Montana district other than the child's resident district; or
- (3) he is enrolled under an approved tuition agreement in a special education class or program operated outside of the state of Montana.

History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971.

Collateral References

Schools and School Districts = 159½.
79 C.J.S. Schools and School Districts § 475.

47 Am. Jur. 415, Schools, § 160.

75-7815. State transportation reimbursement for special education children. Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing two-thirds (2/3) of the reimbursement and the county in which the children reside providing the remainder.

History: En. 75-7815 by Sec. 433, Ch. 5, L. 1971.

75-7816. Financial assistance for under-six (6) year-old special education class or program. Any district operating an approved special education class or program for children under the age of six (6) years or for people who are not less than twenty-one (21) or more than twenty-five (25) years of age shall be eligible for financial assistance in accordance with section 75-7813 and for transportation reimbursement under section 75-7815.

History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971.

CHAPTER 79

TRAFFIC EDUCATION

Section 75-7901. Definitions.

75-7902. State traffic education account and proceeds earmarked for the account.

75-7903. Transmittal of proceeds from fines and other sources.

75-7904. District establishment of public instruction.

75-7906. Annual allocation and distribution of traffic education proceeds, and allocation for state administration.

75-7907. District traffic education fund.

75-7901. Definitions. As used in this Title, unless the context clearly indicates otherwise:

"Traffic education" means instruction in the motor vehicle laws, in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of motor vehicles.

"Traffic education course" means a course of traffic education which has been approved by the superintendent of public instruction.

"Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

"Traffic education account" means the state treasury account in the earmarked revenue fund for the deposit and disbursement of state traffic education revenue.

History: En. 75-7901 by Sec. 435, Ch. 5, L. 1971.

Cross-References

Course qualifies fifteen-year-olds for license, sec. 31-127.

Instruction permits and temporary licenses, sec. 31-129.

Collateral References

Schools and School Districts 164.
79 C.J.S. Schools and School Districts
485.
47 Am. Jur. 441, Schools, § 200.

- 75-7902. State traffic education account and proceeds earmarked for the account. There is hereby established a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles, in the following amounts:
- (1) where a fine is imposed, twenty per cent (20%) of the fine imposed;
- (2) where multiple offenses are involved, twenty per cent (20%) of the total sum of all fines imposed;
- (3) where a fine is suspended, in whole or in part, the portion paid to the traffic education account shall be twenty per cent (20%) of the fine actually paid; and
- (4) when any deposit of bail is made for an offense to which this section applies and the bail is forfeited, twenty per cent (20%) of the forfeited bail.

Five per cent (5%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of Montana shall be contributed to the traffic education account.

History: En. 75-7902 by Sec. 436, Ch. 5, L. 1971.

DECISIONS UNDER FORMER LAW

Constitutionality

Former statute providing for a penalty assessment on bail with resultant revenue to be paid into driver education account

violated constitutional provision that no person shall be deprived of life, liberty or property without due process of law in that penalty assessment on bail amounted to tax on right to bail. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

Former statute requiring penalty assessments, in addition to fines and bail forfeitures, to be paid into driver education account was void as violating constitutional provision that laws for punishment of crime should be founded on principles of reformation and prevention and as indirectly enlarging jurisdiction of justice

and police courts as prescribed in statutes defining jurisdiction of such courts in terms of maximum fine which may be imposed for the offense charged; statute was revenue measure and, as such, violated constitutional provision that no bill shall be passed containing more than one subject which shall be clearly expressed in its title. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

75-7903. Transmittal of proceeds from fines and other sources. The portion of the proceeds from fines and bail forfeitures which are to be deposited in the traffic education account shall be transmitted to the city or county treasurer, as the case may be, by the court collecting them, in the manner and at the times that fines and bail forfeitures are transmitted to such treasurers under law. The court shall indicate what portion of each fine is to be credited to the traffic education account. The city and county treasurers shall transmit monthly to the state treasurer, without deduction, the portions of the fines received which are to be credited to the traffic education account.

When a court is required to transmit fees, fines, and forfeitures directly to the state treasurer, the gross proceeds including the portion of the fines to be credited to the traffic education account shall be transmitted to the state treasurer and the appropriate portion shall be deposited in the traffic education account.

History: En. 75-7903 by Sec. 437, Ch. 5, L. 1971.

75-7904. Duties of superintendent of public instruction. The superintendent of public instruction shall:

- .(1) develop, administer, and supervise the program of instruction in traffic education;
- (2) establish basic course requirements in classroom instruction and behind-the-wheel instruction for traffic education;
- (3) establish the classroom instruction and the behind-the-wheel instruction qualifications for a teacher of traffic education;
- (4) approve teachers of traffic education when such teachers are qualified;
- (5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;
- (6) approve traffic education courses when such courses meet the criteria for approval;
- (7) promulgate a policy for the distribution of the traffic education moneys to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law; and
 - (8) assist districts with the conduct of traffic education.

History: En. 75-7904 by Sec. 438, Ch. 5, T., 1971.

Cross-Reference

Federally assisted driver education and safety programs, sec. 32-4605.

75-7905. District establishment of traffic education program. The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

- (1) for students who are fifteen (15) years old or older or will have reached their fifteenth (15th) birthday within six (6) months of the course completion;
 - (2) taught by a teacher of traffic education;
- (3) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and
- (4) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

History: En. 75-7905 by Sec. 439, Ch. 5, T., 1971.

75-7906. Annual allocation and distribution of traffic education account proceeds, and allocation for state administration. The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction; provided that the reimbursements to districts shall be based upon the number of pupils, who in a given school fiscal year, complete an approved traffic education course including both the class-room instruction and behind-the-wheel driving.

Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include development, printing, and distribution of essential materials; preparation of teachers of traffic education; state supervision of the program; and any and all other activities deemed necessary by the superintendent of public instruction. The amount deducted shall not exceed twenty-four thousand dollars (\$24,000) annually.

History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971.

75-7907. District traffic education fund. The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. The state traffic education reimbursement and all nontax receipts for traffic education shall be deposited in the district's traffic education fund. The expenditure of the moneys deposited in the district's traffic education fund shall not be subject to the budgeting provisions of this Title and may be expended for traffic education.

History: En. 75-7907 by Sec. 441, Ch. 5, L. 1971.

Cross-Reference
Traffic education fund, sec. 75-7215.

CHAPTER 80

SCHOOL FOOD SERVICES

Section 75-8001. Definition.

75-8002. Acceptance, expenditure and administration of federal school food services moneys.

75-8003. Records, reports, reviews and audits.

75-8004. School food commodities.

75-8005. Duties of trustees. 75-8006. Allocation of federal funds to school food services fund for federally connected, indigent pupils.

75-8001. Definition. As used in this Title, unless the context clearly indicates otherwise, "school food services" means a service of providing food for the pupils of a district on a nonprofit basis, and shall include any food service financially assisted through funds or commodities provided by the United States government.

History: En. 75-8001 by Sec. 442, Ch. 5, L. 1971.

75-8002. Acceptance, expenditure and administration of federal school food services moneys. The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by Act of Congress and apportioned to the state for use in financing school food services. This authorization shall apply to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th Congress, chapter 281, 2nd Session), Child Nutrition Act of 1966 (Public Law 642, 89th Congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit such funds to the federal and private grant clearance fund. Any disbursement of the federal school food services funds shall be directed by the superintendent of public instruction.

The superintendent of public instruction may:

- (1) enter into agreements and co-operate with any federal agency, district, or other agency or person, prescribe such regulations, employ such personnel, and take such other action as he may deem necessary to:
- (a) provide for the establishment, operation, and expansion of school food services; and
- (b) disburse federal and state funds according to the requirements of federal and state law:
- give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for such services:
 - (3) accept any gift for use in providing school food services;
- (4) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

75-8003 SCHOOLS

The superintendent of public instruction shall report annually to the board of education on the financial, administrative, and operational phases of school food services.

History: En. 75-8002 by Sec. 443, Ch. 5, L. 1971.

75-8003. Records, reports, reviews and audits. The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records shall always be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and shall be preserved for such period of time, not to exceed five (5) years, as the superintendent of public instruction may prescribe.

The superintendent of public instruction shall conduct or cause to be conducted the audits, inspections, and administrative reviews of the financial records and the operation of school food services.

History: En. 75-8003 by Sec. 444, Ch. 5, L. 1971.

75-8004. School food commodities. The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or non-public school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities, any funds advanced by legislative appropriation for the commodity revolving account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made.

History: En. 75-8004 by Sec. 445, Ch. 5, L. 1971.

75-8005. Duties of trustees. The trustees of any district offering school food services may:

- (1) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;
- (2) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;
 - (3) accept any gift for use of the school food services;
- (4) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of section 75-8006; and
- (5) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.

History: En. 75-8005 by Sec. 446, Ch. 5, Cross-Reference School food services fund, sec. 75-7211.

- 75-8006. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of such federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:
- (1) The indigency must be certified by the county department of welfare, assisted by a committee of three (3) composed of the county superintendent, a representative of the county health department, and an authorized representative of the district;
- (2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund shall be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:
- (a) determining that the pupils included on the claim have been declared indigent under subsection (1);
- (b) determining the number of meals provided the indigent pupils by the school food services;
- (c) determining the price per meal charged the nonindigent pupil; and
- (d) multiplying the number of meals provided to indigent pupils by the price per meal.
- (3) After the county superintendent's confirmation or adjustment of the claim, he shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes.

History: En. 75-8006 by Sec. 447, Ch. 5, L. 1971.

CHAPTER 81

COMMUNITY COLLEGE DISTRICTS

Section 75-8101. Definition.
75-8102. Community college districts name and corporate powers.
75-8103. Supervision by board of regents.
75-8104. Requirements for organization of community college district.
75-8105. Petition to propose organization of community college district.
75-8106. Call of community college district organization election and proposition statement.
75-8107. Election of trustees, districts from which elected and terms of office.

75-8108. Call for nominations of trustee candidates and notice.

75-8109. Nomination of candidates and provision of sample ballot.

75-8110. Notice of organization election.

75-8111. Conduct of election.

Determination of approval or disapproval of proposition and sub-75-8112. sequent procedures if approved.

75-8113. Qualifying and organization of board of trustees.

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75-8115. Tabulation, declaration and certification of elected trustees.

Board of trustees meetings, quorum, travel, reimbursements and seal.

75-8116. Vacancy of trustee position.
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75-8118. Pecuniary interest and letting contracts.
75-8119. Courses of instruction and tuition fees. Pecuniary interest and letting contracts.

75-8120. Employment of personnel and retirement system for employees.

75-8121. Repealed.

75-8122. Sources of financing for and types of capital expenditures.

75-8123. Acceptance of donations.75-8124. Lease or sale of district property.

75-8125. Annexation of territory of districts to community college district.

75-8126. Baccalaureate degrees not to be granted.

75-8127. Budget—approval. 75-8128. Financing budget. 75-8129. Adult education. 75-8130. Federal and state aid.

75-8131. Additional levy proposition—submission to electors.
75-8132. Tax levy.
75-8133. Deposit of moneys.

75-8101. Definition. As used in this Title, unless the context clearly indicates otherwise, the term "community college district" means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction to high school graduates and other persons who have terminated their formal high school education. Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.

History: En. 75-8101 by Sec. 448, Ch. 5, L. 1971.

75-8102. Community college districts name and corporate powers. A community college district shall be known as "Community College District of, Montana." In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law.

History: En. 75-8102 by Sec. 449, Ch. 5, L. 1971.

14 C.J.S. Colleges and Universities §§ 4, 6.

Collateral References

Colleges and Universities 3, 5.

15 Am. Jur. 2d 590, 591, Colleges and Universities, §§ 3, 5.

- 75-8103. Supervision by board of regents. Community college districts shall be under the supervision of the regents. The regents shall:
- Appoint a co-ordinator of community college districts and request legislative appropriations for the operation of his office;
- (2) Formulate and put into effect uniform policies as to budgeting, record-keeping, and student accounting;

- (3) Establish minimum entrance requirements and approve curricular offerings for all community colleges;
- (4) Direct each community college district to seek accreditation from a recognized accrediting association.

History: En. 75-8103 by Sec. 450, Ch. 5, L. 1971; amd. Sec. 1, Ch. 406, L. 1971.

Collateral References
Colleges and Universities €-7.
14 C.J.S. Colleges and Universities §§ 16,

- 75-8104. Requirements for organization of community college district. The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:
- (1) The proposed area shall coincide with the then existing boundaries of contiguous elementary districts of one or more counties.
- (2) The assessed valuation of the proposed area is at least thirty million dollars (\$30,000,000).
- (3) There are at least seven hundred (700) pupils regularly enrolled in public and private high schools located in the proposed area.

History: En. 75-8104 by Sec. 451, Ch. 5, L. 1971.

75-8105. Petition to propose organization of community college district. When the area of a proposed community college district satisfies the specified requirements, the registered electors of the area may petition the regents to call an election for the organization of a community college district. Such petition shall be signed by at least twenty per cent (20%) of the registered electors within each county or a part of a county included in the area of the proposed community college district.

⁷ History: En. 75-8105 by Sec. 452, Ch. 5, L. 1971; amd. Sec. 2, Ch. 406, L. 1971.

75-8106. Call of community college district organization election and proposition statement. A petition for the organization of a community college district shall be presented to the regents. The regents shall examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

If the regents determine that the petition satisfies such requirements, the regents shall order the elementary districts encompassed by the proposed community college district to conduct an election on the community college district organization proposition. Such election shall be held on the next succeeding regular school election day, except that an election required by a petition received by the regents less than sixty (60) days before the regular school election day shall be held at the regular school election in the following school fiscal year.

At such election, the proposition shall be in substantially the following form:

75-8107 SCH00LS

PROPOSITION

Shall there be organized within the area comprising the School Districts
of (elementary districts shall be listed by county), State of
Montana, a community college district for the offering of 13th and 14th
year courses, to be known as the Community College District of,
Montana, under the provisions of the laws authorizing community college
districts in Montana, as prayed in the petition filed with the Board of
Regents at Helena, Montana, on the day of, 19,
☐ For organization

Against organization

History: En. 75-8106 by Sec. 453, Ch. 5,
L. 1971; amd. Sec. 3, Ch. 406, L. 1971.

75-8107. Election of trustees, districts from which elected and terms of office. The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven (7) trustees shall be elected at large, except that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43%) and not more than fifty per cent (50%) of the total school census of the proposed district, as determined by the last school census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder or the proposed community college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the total school census of the proposed district, then four (4) trustees shall be elected from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed community college district. If the trustees are elected at large throughout the entire proposed community college district, the one receiving the greatest number of votes shall be elected for a term of seven (7) years, the one receiving the next greatest number of votes, for a term of six (6) years, the one receiving the next greatest number of votes, for a term of five (5) years, the one receiving the next greatest number of votes for a term of four (4) years, the one receiving the next greatest number of votes for a term of three (3) years, the one receiving the next greatest number of votes for a term of two (2) years, and the elected one receiving the least number of votes for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the one who shall serve for seven (7) years, the one who shall serve for six (6) years, the one who shall serve for five (5) years, the one who shall serve for four (4) years, the one who shall serve for three (3) years, the one who shall serve for two (2) years, and the one who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of seven (7) years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971.

14 C.J.S. Colleges and Universities § 17. 15 Am. Jur. 2d 596, Colleges and Universities, § 11.

Collateral References

Colleges and Universities 7.

75-8108. Call for nominations of trustee candidates and notice. A call for nominations of trustee candidates for the proposed community college district shall be made by the regents. Notice of the call for nominations shall be published in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for three consecutive weeks, the last insertion to be no less than five weeks prior to the date of the election. Such notice shall describe the geographical composition of the board of trustees membership, nomination procedure, and the proposal for the organization of a community college district.

History: En. 75-8108 by Sec. 455, Ch. 5, L. 1971; amd. Sec. 5, Ch. 406, L. 1971.

75-8109. Nomination of candidates and provision of sample ballot. Nominations of candidates for the trustee positions must be filed with the regents at least thirty (30) days prior to the date of the election. Any five qualified electors may file nominations of as many persons as are to be elected to the board of trustees of the proposed community college district from their respective community college trustee election areas. The regents shall provide the trustees of each district ordered to conduct the community college district organization election with a sample of the ballot for the election of the board of trustees. Such sample ballot shall be reproduced by the trustees in a sufficient number to be used as the trustee election ballot.

History: En. 75-8109 by Sec. 456, Ch. 5, L. 1971; amd. Sec. 6, Ch. 406, L. 1971.

75-8110. Notice of organization election. Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district shall be given by the regents by publication in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for three consecutive weeks, the last insertion to be no more than one week prior to the date of the election.

History: En. 75-8110 by Sec. 457, Ch. 5, L. 1971; amd. Sec. 7, Ch. 406, L. 1971.

75-8111. Conduct of election. The election for the organization of the community college district and the election of trustees for such community college district shall be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election. The cost of conducting such election shall be borne by the districts.

75-8112 SCHOOLS

History: En. 75-8111 by Sec. 458, Ch. 5,

Cross-Reference

School elections generally, sec. 75-6401 et sec.

75-8112. Determination of approval or disapproval of proposition and subsequent procedures if approved. The proposal to organize the community college district, to carry, must receive a majority of the total number of votes cast thereon and the co-ordinator of community college districts, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents. Should the certificate of the coordinator of community college districts show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of the county clerk and recorder in each county in which a portion of such new district is located. If the proposition carries, the regents also shall determine which candidates have been elected trustees. Should the proposition to organize the community college district fail to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees.

Within thirty (30) days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the duly elected trustees of their membership and of the organization meeting. Such notification shall designate a temporary chairman and secretary for the purposes of organization.

History: En. 75-8112 by Sec. 459, Ch. 5, L. 1971; amd. Sec. 1, Ch. 164, L. 1971; amd. Sec. 2, Ch. 407, L. 1971.

Compiler's Notes

Section 75-8112 was amended twice in 1971, once by Ch. 164, § 1 (approved March 3, 1971) and once by Ch. 407, § 2 (approved March 18, 1971). Neither amendment mentioned the other nor included the changes made by the other. Ch. 164 deleted "or part of a county" after "county" in the first and present third sentences of the first paragraph and deleted a third sentence reading: "If the proposition carries in some county or counties or parts of counties but not in all portions of the area sought to be included within the district, the board of education shall determine whether the area in which the proposition carried by a majority vote meets the assessed valuation and high school pupil enrollment requirements for the organization of a community college district, and if so, shall establish the boundaries and make an

order declaring the community college district organized in the area in which the proposition has carried by a majority vote."

Although Ch. 407 substituted "regents" for "board of education" in the above quoted sentence, perhaps indicating an intent that the sentence be left in the section and did not delete "or part of a county" where deleted by Ch. 164, the compiler has made a composite section incorporating the changes made by both amendments since section 75-8104 requires that the proposed area of a district coincide with the boundaries of one or more counties and the changes made by Ch. 164 appear to make this section consistent with those requirements.

Ch. 407 also inserted the second sentence of the first paragraph, substituted "may" for "shall" in the third sentence shown in the text and substituted "co-ordinator of community college districts" for "superintendent of public instruction" and "regents" for "board of education" through-

out the section.

75-8113. Qualifying and organization of board of trustees. Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by article XIX, section 1, of the constitution of Montana. At the organization meeting called by the board of education, the board of trustees shall be organized by the election of a president and vice-president and a secretary; said secretary may be or may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college facilities are located.

History: En. 75-8113 by Sec. 460, Ch. 5, L. 1971.

75-8114. Election of trustees after organization of community college district. After organization, the registered electors of the community college district shall vote for trustees on the first Saturday in April, and such elections shall be conducted by the component elementary school districts within such community college district upon the order of the board of trustees of the community college district. Such order shall be transmitted to the appropriate trustees not less than forty (40) days prior to the regular school election day.

Notice of the community college district trustee election shall be given by the board of trustees of the community college district by publication in one (1) or more newspaper of general circulation within each county, not less than once a week for two (2) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of the election. This notice shall be in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that area. All candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than thirty (30) days prior to the date of election. If an electronic voting system or voting machines are not used in the component elementary school district or districts which conduct the election, then the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be conducted in accordance with the school election laws. All costs incident to election of the community college trustees shall be borne by the community college district including one-half (1/2) of the compensation of the judges for the school elections; provided that, if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.

History: En. 75-8114 by Sec. 461, Ch. 5, L. 1971.

14 C.J.S. Colleges and Universities § 17. 15 Am. Jur. 2d 596, Colleges and Universities, § 11.

Collateral References

Colleges and Universities 7.

75-8115 SCHOOLS

75-8115. Tabulation, declaration and certification of elected trustees. When the board of trustees of the community college district has received all the certified results of the election from the component elementary districts, the then qualified members of the board of trustees of such community college district shall tabulate the results so received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at such election.

History: En. 75-8115 by Sec. 462, Ch. 5, L. 1971.

75-8116. Vacancy of trustee position. Any vacancy of a trustee's position shall be filled by appointment by the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term.

History: En. 75-8116 by Sec. 463, Ch. 5. L. 1971.

75-8117. Board of trustees meetings, quorum, travel, reimbursements and seal. The board of trustees of the community college shall hold monthly meetings within the community college district on such day of the month the trustees may set. The president and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district, if in their judgment necessity requires it. The secretary of the board shall give each member a forty-eight (48) hour written notice of all special meetings.

A majority of the board of trustees shall constitute a quorum for the transaction of business except that no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership shall vote in favor of such action.

The members of the board of trustees shall receive ten cents (10ϕ) per mile for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

The board shall keep a common seal with which to attest its official acts.

History: En. 75-8117 by Sec. 464, Ch. 5,
L. 1971; amd. Sec. 1, Ch. 163, L. 1971.

75-8118. Pecuniary interest and letting contracts. It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any community college building in his district, or for furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the college, or to receive or to accept any compensation or reward for services rendered as trustee, except as herein provided. No board of trustees shall let any contract (except if the amount involved is less than two thousand dollars (\$2,000) for building, furnishing, repairing or other

work or supplies for the benefit of the district, without first advertising once each week for at least two (2) weeks in a newspaper published in each county wherein the area of the district lies, and without calling for bids to perform such work or furnish such supplies. In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of trustees shall have the right to reject any and all bids.

History: En. 75-8118 by Sec. 465, Ch. 5, L. 1971.

75-8119. Courses of instruction and tuition fees. A community college district shall provide instruction, classes, school or schools for student residents within the community college district, in academic, occupational, and adult education, subject to the approval of the regents. The board of trustees of such district may in their discretion determine the per capita cost of such courses, file the same with the regents and upon approval thereof by the regents shall require of all nondistrict residents who are accepted as pupils, a tuition fee in such sum as may be necessary for maintenance of such course or courses. A different tuition may be established as between nondistrict residents residing within the state of Montana and those residing outside the state of Montana. In addition thereto, such board of trustees may charge resident students such amounts as it deems necessary to maintain such courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971.

15 Am. Jur. 2d 604, Colleges and Universities, § 18.

Collateral References

Colleges and Universities 9.

14 C.J.S. Colleges and Universities § 27.

Residence: determination of residence or nonresidence for purpose of admission to public college. 83 ALR 2d 497.

.75-8120. Employment of personnel and retirement system for employees. The board of trustees shall appoint the employees of the community college, define and assign their powers and duties and fix their compensation.

The community college district and teachers of a community college district shall be subject to and the teachers shall be eligible for the benefits of the teachers retirement system provided by the laws of Montana.

History: En. 75-8120 by Sec. 467, Ch. 5, L. 1971.

Cross-Reference

Teachers' Retirement System, sec. 75-6201 et seq.

75-8121. Repealed—Chapter 401, Laws of 1971.

Repeal

Section 75-8121 (Sec. 468, Ch. 5, L. 1971), relating to budgeting and financing, participation in foundation program, spe-

cial levy, adult education and acceptance of federal funds, was repealed by sec. 8, ch. 401, Laws 1971. For present provisions, see secs. 75-8126 to 75-8132.

75-8122. Sources of financing for and types of capital expenditures. The board of trustees of any community college district is hereby vested with the power and authority to:

- (1) build, enlarge, alter, repair or acquire by purchase school buildings and dormitories;
 - (2) furnish and equip such buildings;
 - (3) purchase sites for such buildings;
- (4) levy an additional tax not exceeding ten (10) mills on the dollar of the taxable value of all taxable property within the district for the purposes specified in this section. Such additional tax must be approved by the registered electors in the community college district who are taxpayers upon property within such district. Such election shall be conducted in accordance with the special levy provisions for community college districts.

The board of trustees of a community college district is further vested with the power and authority to accept or borrow moneys from the federal government for the purposes of this section.

History: En. 75-8122 by Sec. 469, Ch. 5, L. 1971.

75-8123. Acceptance of donations. The board of trustees of a community college district, on behalf of the district, is hereby authorized and empowered to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the dower, or will of the testator, or without any conditions imposed.

History: En. 75-8123 by Sec. 470, Ch. 5, L. 1971.

14 C.J.S. Colleges and Universities § 12. 15 Am. Jur. 2d 618, Colleges and Universities, § 33,

Collateral References
Colleges and Universities 6(2).

75-8124. Lease or sale of district property. Whenever a district has property that is not required for the use of the district, such property may be leased or sold and conveyed to the community college district. Such lease or sale of property shall be consummated in accordance with the provisions of the law of Montana.

History: En. 75-8124 by Sec. 471, Ch. 5, L. 1971.

Collateral References
Colleges and Universities \$\infty 6(3)\$.
14 C.J.S. Colleges and Universities \§ 11.

75-8125. Annexation of territory of districts to community college district. Whenever ten per cent (10%) of the registered electors of an elementary district or districts of one county petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district shall order an annexation election in the area defined by the petition. Such election shall be ordered within sixty (60) days of the receipt of the petition.

The election shall be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election except that the board of trustees of the community college shall perform the requirements of the board of education and there shall not be an election of the board of trustees of the community college.

The proposition on the ballot shall be as follows:

"Shall school districts be annexed to and become a part of the community college district of Montana?

☐ For Annexation

☐ Against Annexation"

To carry, the proposals to annex must receive a majority of the total votes cast thereon. Upon receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution shall be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and upon such filing, the area to be annexed shall then become a part of the community college district.

History: En. 75-8125 by Sec. 472, Ch. 5, L. 1971; amd. Sec. 1, Ch. 162, L. 1971.

75-8126. Baccalaureate degrees not to be granted. A community college district shall be prohibited from granting baccalaureate degrees.

History: En. 75-8126 by Sec. 1, Ch. 407,
L. 1971.

75-8127. Budget—approval. The board of trustees of a community college district shall adopt an annual general fund budget for the general maintenance and operation of the community college district. The budget shall be submitted to the regents of the state of Montana for their approval, with or without adjustment. The budget approved by the regents shall be the budget of the community college district submitted to the budget officer of the state.

History: En. Sec. 1, Ch. 401, L. 1971. Collateral References

Colleges and Universities 4, 6(5).

14 C.J.S. Colleges and Universities §§ 9, 14.
15 Am. Jur. 2d 615-617, Colleges and Universities, §§ 29-31.

- 75-8128. Financing budget. The annual general fund budget of a community college district shall be financed by the following sources of revenue in the order they are enumerated below:
 - (1) A mandatory three (3) mill levy on the community college district.
- (2) The estimated revenue to be realized from student tuition during the school fiscal year.
- (3) The total of the revenues expressed in subsections (1) and (2) shall be subtracted from the annual general fund budget amount and the amount of the difference shall be financed by a state appropriation for the purpose of financing community college districts.

History: En. Sec. 2, Ch. 401, L. 1971.

75-8129. Adult education. A community college shall be considered a district for the purposes of adult education and under the provisions for adult education may levy a one (1) mill tax for the support of its

75-8130 SCHOOLS

adult education program when the superintendent of public instruction approves such program.

History: En. Sec. 3, Ch. 401, L. 1971.

Cross-Reference

Adult education, secs. 75-7512 to 75-7517.

75-8130. Federal and state aid. The board of trustees of a community college district is hereby authorized to accept funds from the federal government or the state of Montana, their instrumentalities or any of their agencies in aid of any one or more purposes or in maintaining and operating the community college.

History: En Sec. 4, Ch. 401, L. 1971.

75-8131. Additional levy proposition—submission to electors. The board of trustees of a community college district may elect to adopt a general fund budget in excess of the budget funded by the legislature. When the board of trustees proposes such a budget, it shall submit an additional levy proposition to the electors of the district. The additional levy proposition shall be submitted to the electorate in accordance with general school election laws.

History: En. Sec. 5, Ch. 401, L. 1971.

Cross-Reference

School elections, sec. 75-6401 et seq.

75-8132. Tax levy. On the second Monday of August, the board of county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district, at the rate required to finance the three (3) mill levy prescribed by subsection (1) of section 75-8128 plus any approved additional levy. When a community college district has territory in more than one county, the board of county commissioners of each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

History: En. Sec. 6, Ch. 401, L. 1971.

75-8133. Deposit of moneys. Community college district moneys shall be deposited with the county treasurer of the county where the community college is located or with other depositories approved by the regents.

History: En. Sec. 7, Ch. 401, L. 1971.

CHAPTER 82

SCHOOL SITES, CONSTRUCTION AND LEASING

Section 75-8201. Trustees power over property.

75-8202. Land acquired by conditional deed or at will or sufferance.

75-8203. Selection of school sites, approval election, and lease of state lands. 75-8204. Trustees authority to acquire or dispose of sites and buildings, and when election required.

75-8205. Trustees may sell property when resolution passed after hearing, and appeal procedure.

Review and approval of school building plans and specifications. Regulations of board of health. 75-8206.

75-8207.

75-8208. School building plans and specifications approval before payment.

75-8209. Authorization to lease buildings for school purposes.

Letting contracts for school facilities.

75-8211. Leasing district property and disposition of any rentals. 75-8212. Authority and duty of trustees to insure district property.

75-8201. Trustees power over property. The trustees of any district, other than a high school district operating a county high school, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district. In the name of the county, the trustees of a high school district operating a county high school, as defined by section 75-6501, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district.

History: En. 75-8201 by Sec. 473, Ch. 5, L. 1971.

Cross-References

Building construction standards, sec. 69-

Fire safety provisions, sec. 69-1801 et

Lighting, heating, ventilation and sanitary arrangements, sec. 69-4117.

State board of land commissioners, composition and duties, Const., Art. XI, sec. 4.

Collateral References

Schools and School Districts 64, 65. 78 C.J.S. Schools and School Districts §§ 239, 240.

47 Am. Jur. 340, Schools, § 62.

75-8202. Land acquired by conditional deed or at will or sufferance. Whenever, after the effective date of chapter 206, Laws of 1939, the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed, or if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of his intent to repossess the land, and the trustees shall thereafter have one (1) year to remove any buildings or improvements placed there by the district. The trustees failure to remove the buildings or improvements within that time shall constitute a forfeiture of such buildings or improvements. Before the owner or claimant shall have the right to give notice of repossession, the district's intention to permanently cease using the land shall have been established by resolution of the trustees and vote of the district's electors.

History: En. 75-8202 by Sec. 474, Ch. 5, L. 1971.

Compiler's Note

Chapter 206, Laws of 1939, referred to at the beginning of this section, was repealed by Sec. 496, Ch. 5, Laws 1971.

Collateral References

Schools and School Districts \$\infty\$65. 78 C.J.S. Schools and School Districts § 254. 47 Am. Jur. 347, Schools, § 69.

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

75-8203. Selection of school sites, approval election, and lease of state lands. The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes but such selection shall first be approved by the qualified electors of the district before any contract for the purchase of such site is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.

The election for the approval of a site shall be called under the provisions of section 75-6406 and shall be conducted in the manner prescribed by this Title for school elections. An elector who may vote at a school site election shall be qualified to vote under the provisions of section 75-6410. If a majority of those voting at the election approve the site selection, the trustees shall have the authority to purchase such sites. A site approval election shall not be required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of such site.

Any site for a school building or other building of the district that is selected or purchased by the trustees shall:

- (1) be in a place that is convenient, accessible and suitable;
- (2) comply with the minimum size and other requirements prescribed by the board of health of the state of Montana; and
- (3) comply with the state-wide building regulations, if any, promulgated by the state building code council.

The state board of land commissioners shall have the authority to sell, at the appraised value, or to lease for any period of time less than ninetynine (99) years, at an amount of one dollar (\$1) per year, to a district any tract of state land of not more than ten (10) acres to be used as a school site in such district.

History: En. 75-8203 by Sec. 475, Ch. 5, L. 1971.

Cross-References

Eminent domain, sec. 93-9902.

Collateral References

Schools and School Districts 58 C.J.S. Schools and School Districts 247.
47 Am. Jur. 343, Schools, § 66.

DECISIONS UNDER FORMER LAW

Class of Districts Affected

Former statute dealing with election to select school site was applicable to third class districts only. State ex rel. Wildin v. Eickoff, 84 M 539, 543, 276 P 954; Nichols v. School District No. 3, 87 M 181, 187, 287 P 624.

Election

Under former statute, an election for the purpose of choosing a school site in a district of the third class was to be conducted as an election of school officers; petition need not designate the site, but any five qualified electors could file the nomination of a particular site, and others

in like manner might nominate other sites. State ex rel. Wildin v. Eickoff, 84 M 539, 543, 276 P 954.

Health Officer's Approval of Site

Approval of school site by county health officer, required by former statute, was not needed prior to electors' choosing of site. State ex rel. Wildin v. Eickoff, 84 M 539, 543, 276 P 954.

Repealed in Part

Former section authorizing trustees of first and second class school districts to change or select school sites without the sanction of the electors of the district was impliedly repealed by Ch. 122, Laws 1923 providing generally that school boards should not build or remove school-houses, nor purchase, sell or locate school

sites unless directed so to do by a majority of the electors of the district. Nichols v. School District No. 3, 87 M 181, 184 et seq., 287 P 624.

- 75-8204. Trustees authority to acquire or dispose of sites and buildings, and when election required. The trustees of any district shall have the authority to purchase, build, exchange, or otherwise acquire or sell or otherwise dispose of sites and buildings of the district. Such action shall not be taken by the trustees without the approval of the qualified electors of the district at an election called for such approval unless:
- (1) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;
- (2) an additional levy under the provisions of section 75-6923 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;
- (3) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum-general-fund-budget-without-a-vote amount prescribed in section 75-6905, and, in the case of a site purchase, the site has been approved under the provisions of section 75-8203; or
- (4) moneys are otherwise available under the provisions of this Title and the ballot for the site approval for such building incorporated a description of the building to be located on the site.

When an election is conducted under the provisions of this section, it shall be called under the provisions of section 75-6406 and shall be conducted in the manner prescribed by this Title for school elections. An elector qualified to vote under the provisions of section 75-6410 shall be permitted to vote in such election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

History: En. 75-8204 by Sec. 476, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts §§ 248, 253, 258, 263.
47 Am. Jur. 340, Schools, § 62.

Collateral References

Schools and School Districts 65, 70, 74.

75-8205. Trustees may sell property when resolution passed after hearing, and appeal procedure. Whenever the trustees of any district determine that a site, building, or any other real property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real property in accordance with this section and without conforming to the provisions of section 75-8204.

The trustees of any district shall adopt a resolution stating their intention to sell or otherwise dispose of district real property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district. When such a resolution is adopted, the trustees shall set the date of the trustees meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of

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such real property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for five (5) days after the date of its adoption.

Any taxpayer may appeal the resolution of the trustees, at any time within five (5) days after the date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition shall stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest, convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

The trustees of a district that has adopted a resolution to sell or otherwise dispose of distric treal property and, if appealed, has been upheld by the court shall sell or dispose of such real property in any reasonable manner that they determine to be in the best interests of the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971.

Cross-References

Building fund, sec. 75-7213.

Separate debt service fund maintained by county treasurer, sec. 75-7129.

Collateral References

Schools and School Districts 56, 74.
78 C.J.S. Schools and School Districts 88 253, 263.

75-8206. Review and approval of school building plans and specifications. No school building in the state, either publicly or privately owned or operated, shall be built, enlarged, remodeled, or repaired until the plans and specifications for such construction have been submitted to the state board of health and the state fire marshal, and such public agencies have endorsed their approval on such plans and specifications. The plans and specifications shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the regulations of the board of health and of the state fire marshal. The plans and specifications shall be prepared in accordance with the regulations of the board of health of the state of Montana, the regulations of the Montana state fire marshal, and the building code promulgated by the state building code council.

As a service to districts, the superintendent of public instruction shall review the plans and specifications submitted to the board of health to assist the districts in designing facilities for optimum utilization.

History: En. 75-8206 by Sec. 478, Ch. 5, L. 1971.

Cross-Reference

Fire escapes, fire-fighting apparatus and fire alarms, requirements for, sec. 69-1801 et seq.

Collateral References

Schools and School Districts 71, 73. 78 C.J.S. Schools and School Districts \$\\$257, 262. 47 Am. Jur. 349, Schools, \\$72.

- 75-8207. Regulations of board of health. The state board of health shall adopt regulations prescribing the requirements for school sites, school buildings, ventilation, heating, lighting, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools. Such regulations of the state board of health shall require:
- (1) at least fifteen (15) square feet of floor space and two hundred (200) cubic feet of air space for each pupil to be accommodated in each classroom;
- (2) a system of ventilation which shall be adequate to produce satisfactory conditions of air in all rooms of the building at all times and under all conditions;
- (3) a ventilation system of fire resistant material and construction; and
- (4) a system of lighting all parts of the building that will produce an adequate quality and quantity of illumination at all times.

The state board of health shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971.

75-8208. School building plans and specifications approval before payment. The trustees of a district shall not make any payment under any contract for the construction of school facilities until the plans and specifications for such construction have been approved under the provisions of section 75-8206. Any contractor, architect, trustee, or any other person, firm, or corporation who shall violate the provisions of section 75-8206, this section or any regulation promulgated by the state board of health or the state fire marshal shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History: En. 75-8208 by Sec. 480, Ch. 5, L. 1971.

75-8209. Authorization to lease buildings for school purposes. The trustees of any district shall have the authority to lease buildings suitable for school purposes when it is within the best interests of the district to lease such building from the county, another district, or any person. Except as provided in section 75-8203, such lease may be for a term of not more than three (3) years and, when the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5,

Use of public school premises for religious purposes during nonschool time, 79 ALR 2d 1148.

Collateral References

L. 1971.

Schools and School Districts 72. 78 C.J.S. Schools and School Districts § 259. 47 Am. Jur. 346, Schools, § 68.

75-8210. Letting contracts for school facilities. Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building shall be conducted under the provisions of section 75-6808.

History: En. 75-8210 by Sec. 482, Ch. 5, L. 1971.

Cross-Reference

Bids to show contractor is licensed and not presently working overtime on incomplete contract, sec. 84-3507.

Collateral References

Schools and School Districts 78. 78 C.J.S. Schools and School Districts

75-8211. Leasing district property and disposition of any rentals. The trustees of any district shall have the authority to rent, lease, or let any buildings or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting shall be deposited to the credit of that fund which finances the cost of maintaining such real property.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971.

Cross-References

Apportionment of rents from school lands, Const., Art. XI, sec. 5. Oil and gas leases, secs. 60-701 to 60-703. Collateral References

Power of school or local authorities as to granting leases of school property. 111 ALR 1051.

75-8212. Authority and duty of trustees to insure district property. The trustees of any district shall have the authority and it shall be their duty to insure any or all real and personal property of the district.

History: En. 75-8212 by Sec. 484, Ch. 5, L. 1971.

78 C.J.S. Schools and School Districts § 274. 47 Am. Jur. 350, Schools, § 73.

Collateral References

Schools and School Districts 78.

CHAPTER 83

MISCELLANEOUS PROVISIONS

Section 75-8301. Gender.

75-8302. Fines and penalties proceeds for elementary county equalization and reporting such proceeds.

75-8303. School officers not to act as agents.

75-8304. Oath of office.

75-8305. Duty of county attorney. 75-8306. Disturbance of school.

75-8307. Penalty. 75-8308. Fire drill.

75-8309. Instruction in fire dangers and prevention.

75-8310. School safety patrols. 75-8311. Separability clause.

75-8301. Gender. Whenever the masculine gender is used in this Title, it shall be understood also to mean the feminine gender.

History: En. 75-8301 by Sec. 485, Ch. 5, L. 1971.

- 75-8302. Fines and penalties proceeds for elementary county equalization and reporting such proceeds. All fines and penalties collected under the provisions of this Title shall be collected by the action of a court of competent jurisdiction and shall be paid into the county elementary equalization fund as provided by subsection (4) of section 75-6912. In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, the following reports shall be made to the county superintendent of the county in which each court or justice of the peace shall have jurisdiction:
- (1) during the month of September each justice of peace shall report all fines imposed and collected during the preceding year indicating the type of violation, and the date of collection; and
- at the close of each term the clerk of each district court shall report all fines imposed and collected during the term, indicating the type of violation, and the date of collection.

History: En. 75-8302 by Sec. 486, Ch. 5, L. 1971.

Collateral References

Fines 20; Penalties 14.

36A C.J.S. Fines § 19; 70 C.J.S. Penalties § 20.

36 Am. Jur. 2d 654, Forfeitures and Penalties, § 67.

School officers not to act as agents. The superintendent of public instruction or members of his staff, county superintendent or members of his staff, trustee or district employee shall not act as an agent or solicitor in the sale or supply of goods or services to a district. No such person shall assist or receive a reward from an agent or solicitor of goods or services for a district. Any such person violating this section shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than fifty dollars (\$50) or more than two hundred dollars (\$200) and shall be liable to removal from his position. The penalties provided by this section shall not be applicable if the charge and conviction are made under the provisions of section 75-7610.

History: En. 75-8303 by Sec. 487, Ch. 5, L. 1971.

Collateral References

Schools and School Districts 47, 48(8), 63(3), 147. 78 C.J.S. Schools and School Districts

§§ 90, 100, 127, 238.

Oath of office. Any person elected or appointed to any public office authorized by this Title shall take the oath of office before qualifying for and assuming the office. In case an officer has a written appointment or commission, his oath shall be endorsed thereon; otherwise it may be taken orally; and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for such public office.

History: En. 75-8304 by Sec. 488, Ch. 5, L. 1971.

Cross-References

Constitutional oath of office, Const., Art. XIX, sec. 1.

County superintendent's power to administer oath to trustees, secs. 75-5805, 75-5807, 75-5916.

Teachers' loyalty oath, sec. 75-6004. University system professors, instructors or teachers, oath required, sec. 75-8505.

Collateral References

Oath 1; Officers 36(1).

67 C.J.S. Oaths and Affirmations §§ 1, 2; 67 C.J.S. Officers § 38.

39 Am. Jur. 493 et seq., Oath and Affirmation, §1 et seq.; 42 Am. Jur. 971, Public Officers, §125.

Validity of governmental requirement of oath of allegiance or loyalty as applied to school officers. 18 ALR 2d 319.

Dismissal or rejection of public school teacher because of disloyalty. 27 ALR 2d 487.

75-8305. Duty of county attorney. Upon request of the county superintendent or the trustees of any school district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party, however, the trustees of any school district may, upon consent of the county attorney, employ any attorney licensed in Montana to perform any legal services in connection with school board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, § 2.

Collateral References

District and Prosecuting Attorneys 7 (1), 9.

27 C.J.S. District and Prosecuting Attorneys §§ 12(1), 12(2), 15(1).
42 Am. Jur. 253, Prosecuting Attorneys,

42 Am. Jur. 253, Prosecuting Attorneys § 19.

75-8306. Disturbance of school. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than ten dollars (\$10) or more than one hundred dollars (\$100).

History: En. 75-8306 by Sec. 490, Ch. 5, L. 1971.

Cross-References

Disturbance of school or school meeting, misdemeanor, sec. 94-1420.

Duties of pupils, sanctions, sec. 75-6310.

Collateral References

Disturbance of Public Assemblage = 1 et seq.; Schools and School Districts 173. 27 C.J.S. Disturbance of Public Meet-

ings § 1 et seq.; 79 C.J.S. Schools and School Districts § 512.

24 Am. Jur. 2d, 141 et seq., Disturbing Meetings, § 1 et seq.

Breach of peace, disorderly conduct, etc.: participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense. 32 ALR 3d 551.

75-8307. Penalty. Unless otherwise specifically provided by law, any person who shall violate any provisions of this Title shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than twenty dollars (\$20) or more than two hundred dollars (\$200), or by imprisonment in the county jail for not less than five (5) days or more than thirty (30) days, or by both such fine and imprisonment.

History: En. 75-8307 by Sec. 491, Ch. 5, L. 1971.

75-8308. Fire drill. In a public or private school with thirty (30) or more children enrolled, the trustees of the district or those persons charged with the administration of the private school shall provide and install the number of fire gongs prescribed by the fire marshal for such school. The teachers in schools equipped with a fire gong shall instruct the children under their supervision in the fire drill procedure of their school. The district superintendent or principal or, if there is none, the teacher shall cause the conduct of a fire drill once a week for the first month of school and once each month thereafter. The fire drills shall be conducted on no certain day of the week or hour of the day by sounding the gong and immediately ushering the children out the nearest exit in single file.

Any trustee, school employee or other person charged with responsibilities under this section who does not comply with this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than five dollars (\$5) or more than fifty dollars (\$50).

History: En. 75-8308 by Sec. 492, Ch. 5, L. 1971.

Cross-Reference

Fire escapes, fire-fighting apparatus and fire alarms, requirements for, sec. 69-1801 et seq.

75-8309. Instruction in fire dangers and prevention. Every teacher or instructor of a public or private elementary grade consisting of more than ten (10) pupils shall devote not less than ten (10) minutes in each week during which school is in session to the instruction of pupils in fire dangers.

For the purpose of such instruction it shall be the duty of the commissioner of insurance to prepare a book, conveniently arranged in lessons. Such lessons shall be in a sufficient number to provide a different lesson for each week of the legally prescribed school term. One of the lessons shall be read by the teachers each week. If the commissioner of insurance deems it advisable, fire danger lessons published by another state may be used in lieu of the lessons published by the commissioner of insurance.

The fire danger book shall be published at the expense of the state from the amount appropriated for public printing, under the direction of the superintendent of public instruction, and shall be distributed by the superintendent of public instruction in quantities sufficient to provide a copy for each teacher required to give fire danger instruction.

Willful neglect by any person in charge of any public, private or parochial school of the elementary grades to comply with the provisions of this chapter, shall be a misdemeanor, punishable for each offense by a fine of not less than five dollars (\$5) nor more than twenty dollars (\$20).

History: En. 75-8309 by Sec. 493, Ch. 5, L. 1971.

79 C.J.S. Schools and School Districts § 485. 47 Am. Jur. 441, Schools, § 200.

Collateral References

Schools and School Districts 164.

75-8310. School safety patrols. The trustees of any district or the administration of any private school shall have the authority to organize

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and supervise school safety patrols for a school under their authority. The purpose of school safety patrols shall be to influence and encourage other pupils of the school to refrain from crossing public highways at points other than regular crossings and to direct pupils as to when and where to cross highways.

The school safety patrol shall be formed from the children of the school who are nine (9) years of age or more or, if there are none, who are of the highest grade of such school. Before any child may serve on the school safety patrol, the parent or guardian of such child shall give written consent for his child to serve on the school safety patrol.

No liability shall attach either to the school, educational institution, governing board, directing authority, or parent or guardian, or any individual director, member of the trustees, district superintendent, principal, teacher or other school authority by virtue of the organization, maintenance or operation of such school safety patrol because of injuries sustained by any pupil, whether a member of the patrol or otherwise by reason of the operation and maintenance thereof.

Identification and operation of school safety patrols shall be uniform throughout the state and the method of identification and signals to be used shall be as prescribed by the superintendent of public instruction in cooperation with the Montana highway patrol.

Any municipality, city or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol camp located in this state and may pay the expense necessarily incurred in providing such training, out of any funds available for such purpose.

History: En. 75-8310 by Sec. 494, Ch. 5, L. 1971.

Cross-Reference

Driving through column of children or past safety patrol member unlawful, sec. 32-2177.

Separability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 75-8311 by Sec. 495, Ch. 5, L. 1971.

CHAPTER 84

ESTABLISHMENT OF MONTANA UNIVERSITY SYSTEM

Section 75-8401. Purpose.

75-8402. Definitions.

75-8403. Units constituting university system.

75-8404. Prohibition against use of name of system.
75-8405. Purposes of the university of Montana.
75-8406. Departments and courses of the university of Montana.

75-8407. Purpose of Montana college of mineral science and technology.

75-8408. Bureau of mines and geology—purpose.
75-8409. Director and assistants.
75-8410. Designation and purpose of Montana state university.
75-8411. Agricultural experiment station—establishment, purpose.

75-8411.1. Duties of director of the agricultural experiment station.

75-8411.2. Agricultural research centers.

75-8411.3. Montana wool laboratory—designation—purpose.

75-8411.4. Montana grain and seed laboratory.

75-8411.5. Acceptance of donations.

75-8411.6. Federal grants and co-operative research studies.

75-8411.7. Income and its disposition.

75-8412 to 75-8422. Repealed.

75-8423. Purpose of eastern Montana college. 75-8424. Purpose of western Montana college. 75-8425. Donations to eastern Montana college.

75-8426. Donations to western Montana college.

75-8427. Acceptance of public lands.

75-8428. Purposes of northern Montana college. 75-8429. Authority to accept gifts.

75-8401. Purpose. The Montana university system shall instruct men and women on equal terms.

History: En. 75-8401 by Sec. 1, Ch. 2, L. 1971.

Cross-Reference

Admission not to be denied on account of sex, Const., Art. XI, sec. 9.

Collateral References

Colleges and Universities 1.

14 C.J.S. Colleges and Universities § 2. 15 Am. Jur. 2d 593, Colleges and Universities, § 7.

Tort liability of public schools and institutions of higher learning. 160 ALR 7 and 86 ALR 2d 489.

accidents associated with chemistry ex-

periments, shopwork and manual or vocational training. 35 ALR 3d 758.

accidents associated with transportation of students. 34 ALR 3d 1210.

accident occurring during school athletic events. 35 ALR 3d 725.

accidents occurring in physical education classes. 36 ALR 3d 361.

condition of buildings or equipment, 34 ALR 3d 1166.

injuries caused by acts of fellow students. 36 ALR 3d 330.

Immunity: comment note on rule of governmental tort nonliability as applied to public schools and institutions of higher learning. 33 ALR 3d 703.

- 75-8402. Definitions. Subject to additional definitions contained in subsequent chapters which are applicable to specific chapters or parts, and unless the context requires otherwise, terms are defined as follows:
- "Agricultural experiment station" means the agricultural experiment station established at Montana state university;
- "Regents" means the board of education serving ex officio as regents of the Montana university system;
- (3) "State university" means the Montana state university, located at Bozeman;
 - "System" means the Montana university system; (4)
 - "University" means the university of Montana, located at Missoula.

History: En. 75-8402 by Sec. 2, Ch. 2, L. 1971.

Units constituting university system. The Montana university system is composed of the following units, each designated by its legal name:

- university of Montana, located at Missoula; (1)
- Montana state university, located at Bozeman;
- (3) Montana college of mineral science and technology, located at Butte;

- (4) western Montana college, located at Dillon;
- (5) eastern Montana college, located at Billings; and
- (6) northern Montana college, located at Havre.

History: En. 75-8403 by Sec. 3, Ch. 2, L. 1971.

Collateral References

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

75-8404. Prohibition against use of name of system. (1) The state has the exclusive right to the name "the Montana university system."

- (2) No other institution of learning, or corporation shall use the name "the Montana university system" or similar name.
- (3) The attorney general shall bring action in the name of the state against any person, association, or corporation using the same or similar name.
- (4) The penalty for violation of this section shall be the dissolution of the corporation, and a sum not exceeding five hundred dollars (\$500), nor less than one hundred dollars (\$100).

History: En. 75-8404 by Sec. 4, Ch. 2, L. 1971.

- 75-8405. Purposes of the university of Montana. (1) The university of Montana shall have for its purpose instruction in all the departments of science, in literature, in the arts, and in industrial and professional education.
 - (2) A law school is established at the university of Montana.
 - (3) A forestry school is established at the university of Montana.

History: En. 75-8405 by Sec. 5, Ch. 2, L. 1971.

- 75-8406. Departments and courses of the university of Montana. (1) The departments of the university are:
- (a) a preparatory department, which may be dissolved as the regents deem wise, containing courses designed to prepare a student for the regular department;
- (b) a department of literature, science, and the arts, offering courses which shall include:
- (i) mathematics, physical and natural sciences, with their application to the industrial arts;
 - (ii) languages, literature, history, and philosophy; and
 - (iii) other courses at the regents discretion; and
 - (c) professional and technical departments.
- (2) When the income of the university allows and demands require, the courses may form departments, with a faculty and an appropriate title.

History: En. 75-8406 by Sec. 6, Ch. 2, L. 1971.

75-8407. Purpose of Montana college of mineral science and technology.

(1) The Montana college of mineral science and technology has for its

purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as "the Montana state bureau of mines and geology," which shall be under the direction of the regents is established at the college.

History: En. 75-8407 by Sec. 7, Ch. 2, L. 1971.

- 75-8408. Bureau of mines and geology—purpose. The bureau of mines and geology shall:
- (1) Compile and publish statistics relative to Montana geology, mining, milling, and metallurgy.
 - (2) Collect:
 - (a) typical geological and mineral specimens;
 - (b) samples of products;
- (c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and
- (d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;
- (3) Study the geological formations of Montana, with special reference to their economic mineral resources, and ground water.
- (4) Examine the topography and physical features of Montana relative to their bearing upon the occupation of the people.
- (5) Study the mining, milling, and smelting in Montana relative to their improvement.
- (6) Publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;
 - (7) Make qualitative examinations of rocks and mineral samples.
- (8) Consider scientific and economic problems the regents deem valuable to the people of Montana.
- (9) Communicate special information of Montana geology, mining and metallurgy.
 - (10) Co-operate with:
 - (a) departments of the system;
 - (b) the state mine inspector;
 - (c) departments of the state;
 - (d) the United States geological survey; and
 - (e) the United States bureau of mines.
- (11) Make examinations of state land regarding their geology and mineral value at the request of the department of state lands and investments.
- (a) These services are limited to the time available for such work after all other duties of the bureau of mines and geology are served.

- (b) Written reports shall be made.
- (c) Travel, food, lodging, and incidental expenses incurred by the examiner shall be paid by the agency requesting the examination upon the presentation of claims in the ordinary form.
- (12) Deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology.
- (13) Distribute duplicates of representative material to the units of the university system to their best educational advantage.
- (14) Print the regular and special reports, with illustrations and maps, and distribute them on direction of the regents.

History: En. 75-8408 by Sec. 8, Ch. 2, L. 1971.

Collateral References

15 Am. Jur. 2d 593, Colleges and Universities, § 8.

75-8409. Director and assistants. The director and assistants of the bureau of mines and geology shall:

- (1) take an oath to perform all required services;
- (2) guard all confidential information accumulated in their work;
- (3) refrain from pecuniary speculation or remunerative private work based upon knowledge of a commercial or economic nature acquired through their services, until the knowledge is published and submitted to the people of Montana; and
- (4) turn in to the bureau of mines and geology, as state property, all correspondence, notes, illustrations, and other accumulated data.

History: En. 75-8409 by Sec. 9, Ch. 2, L. 1971.

- 75-8410. Designation and purpose of Montana state university. (1) The land-grant university for the state of Montana, designated as Montana state university, is established at Bozeman, under the provisions of the Morrill Act of 1862.
- (2) Montana state university shall be a comprehensive institution carrying out programs of research and public service and offering instruction in the sciences, literature and arts, including military science, as well as professional programs in agriculture, engineering and other fields as may be prescribed by the regents.

History: En. 75-8410 by Sec. 10, Ch. 2, L. 1971.

Compiler's Note

The Morrill Act of 1862, referred to above, is compiled in the United States Code as Tit. 7, secs. 301 to 308.

14 C.J.S. Colleges and Universities §§ 4, 5.

15 Am. Jur. 2d 590, Colleges and Universities, § 3.

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

Collateral References

Colleges and Universities 3.

75-8411. Agricultural experiment station — establishment, purpose.
(1) There is established at the state university at Bozeman, and under its

direction, an agricultural experiment station, by virtue of the Hatch Act, approved by Congress on March 2, 1887. The provisions, donations and benefits contained in that act and all acts supplementary thereto or amendatory thereof, are accepted and adopted by the state of Montana.

- (2) The purpose of the agricultural experiment station shall be to conduct and promote studies, scientific investigations and experiments relating to agriculture, natural resources and rural life, and to diffuse information thereby acquired among the people of Montana.
- (3) The agricultural experiment station shall include, in addition to the central location at Bozeman, the designated research centers and other affiliated testing and research facilities.

History: En. 75-8411 by Sec. 11, Ch. 2, L. 1971; amd. Sec. 1, Ch. 29, L. 1971.

Compiler's Note

The Hatch Act, referred to in subsection (1), is compiled in the United States Code as Tit. 7, secs. 361 to 379.

Agricultural Experiment Station and Extension Service

The agricultural experiment station and the agricultural extension service were not parts of the agricultural college or component parts of the university of Montana; hence appropriations made for them could not be charged to receipts from the mill and half levy for state purposes authorized for the maintenance of the university. State ex rel. Jones v. Erickson, 75 M 429, 441, 244 P 287.

Collateral References

15 Am. Jur. 2d 593, Colleges and Universities, § 8.

75-8411.1. Duties of director of the agricultural experiment station. The director shall have the immediate direction, management and control of the agricultural experiment station, subject to the general supervision, direction and control of the regents and the president of the state university.

History: En. Sec. 3, Ch. 29, L. 1971.

- 75-8411.2. Agricultural research centers. The following agricultural research centers are established as a part of the agricultural experiment station:
 - (1) the central agricultural research center, located near Moccasin;
 - (2) the western agricultural research center, located near Corvallis;
 - (3) the northern agricultural research center, located near Havre;
 - (4) the southern agricultural research center, located near Huntley;
- (5) the northwestern agricultural research center, located near Kalispell:
 - (6) the eastern agricultural research center, located near Sidney.

All research centers shall be under the general supervision of the director of the agricultural experiment station.

History: En. Sec. 4, Ch. 29, L. 1971.

- 75-8411.3. Montana wool laboratory designation purpose. (1) There is established as a part of the agricultural experiment station the Montana wool laboratory.
- (2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of wools as possible.

(3) The wool laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 5, Ch. 29, L. 1971.

- 75-8411.4. Montana grain and seed laboratory. (1) There is established as a part of the agricultural experiment station the Montana grain and seed laboratory.
- The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of grains and seeds as possible.
- The laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 6, Ch. 29, L. 1971.

Cross-Reference

Testing agricultural seeds, secs. 3-805 to 3-807.

75-8411.5. Acceptance of donations. The director, with the consent of the regents, may accept on behalf of the state of Montana, for the use of the agricultural experiment station, donations of real property, money, implements, scientific equipment, building materials, animals, supplies, and any other gifts considered beneficial by the director. Such donations may be accepted from both public and private sources, including the government of the United States.

History: En. Sec. 7, Ch. 29, L. 1971.

Collateral References

Colleges and Universities 6(2).

14 C.J.S. Colleges and Universities § 12. 15 Am. Jur. 2d 618, Colleges and Uni-

versities, § 33.

75-8411.6. Federal grants and co-operative research studies. The director of the agricultural experiment station may take appropriate steps to qualify for and receive grants and other forms of assistance made available by the government of the United States and may enter into agreements with governmental agencies for co-operative research studies.

History: En. Sec. 8, Ch. 29, L. 1971.

Collateral References

15 Am. Jur. 2d 616, Colleges and Universities, § 30.

75-8411.7. Income and its disposition. Any income received from the sale of agricultural products and services by the agricultural experiment station shall be deposited in the state treasury and shall be used to defray the costs of operating the station.

History: En. Sec. 9, Ch. 29, L. 1971.

Collateral References

15 Am. Jur. 2d 616, Colleges and Univer-

75-8412 to 75-8422. Repealed—Chapter 29, Laws of 1971.

Sections 75-8412 to 75-8422 (Secs. 12 to 22, Ch. 2, L. 1971), relating to acceptance of congressional act, the wool and

grain inspection laboratories and branchs and a substation of the agricultural experiment station, were repealed by Sec. 10, Ch. 29, Laws 1971. 75-8423. Purpose of eastern Montana college. Eastern Montana college has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8423 by Sec. 23, Ch. 2, L. 1971.

Collateral References

15 Am. Jur. 2d 591, Colleges and Universities, § 4.

75-8424. Purpose of western Montana college. Western Montana college has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8424 by Sec. 24, Ch. 2, L. 1971.

Collateral References

15 Am. Jur. 2d 591, Colleges nad Universities, § 4.

75-8425. Donations to eastern Montana college. The regents may accept for and on behalf of eastern Montana college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8425 by Sec. 25, Ch. 2, L. 1971.

14 C.J.S. Colleges and Universities § 12. 15 Am. Jur. 2d 618, Colleges and Universities, § 33.

Collateral References

Colleges and Universities 6(2).

75-8426. Donations to western Montana college. The regents may accept for and on behalf of western Montana college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8426 by Sec. 26, Ch. 2, L. 1971.

14 C.J.S. Colleges and Universities § 12. 15 Am. Jur. 2d 618, Colleges and Universities, § 33.

Collateral References

Colleges and Universities 6(2).

- 75-8427. Acceptance of public lands. (1) The regents shall receive in the names of western Montana college and eastern Montana college, all benefits derived from the distribution of lands contemplated in section 17 of an Act of Congress, approved February 22, 1889 entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states."
- (2) The regents may in carrying out the provisions of Title 75, R. C. M., 1947, pledge one-half $(\frac{1}{2})$ of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the regents for residence halls or other facilities at western Montana college or at eastern Montana college, provided that:
 - (a) any such pledge shall be subject to any prior pledge; and
- (b) all pledges of income and interest must have the final approval of the state board of examiners.

History: En. 75-8427 by Sec. 27, Ch. 2, L. 1971; amd. Sec. 1, Ch. 289, L. 1971.

Compiler's Note

The Enabling Act, referred to above, is set forth in Volume One, Part I of this code.

Collateral References

Colleges and Universities 6(3). 14 C.J.S. Colleges and Universities § 11. 15 Am. Jur. 2d 616, Colleges and Universities, § 30.

75-8428. Purposes of northern Montana college. (1) Northern Montana college has for its purpose, instruction and education in:

- the English language, history, literature, mathematics, bookkeeping, moral philosophy and political, rural and household economy;
- mechanical arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art:
- (c) entomology, geology, and such other natural sciences as may be prescribed by the regents:
- agriculture, horticulture, and especially the application of science and the mechanical arts to practical agriculture in the field;
 - irrigation and use of water for agricultural purposes; and
 - all that relates to an efficient, modern manual training school.

History: En. 75-8428 by Sec. 28, Ch. 2, L. 1971; amd. Sec. 2, Ch. 29, L. 1971.

75-8429. Authority to accept gifts. On behalf of the state, the regents may accept all gifts or grants of any kind for the use of any of the units of the university system. Gifts or grants subject to specific provisions shall be accepted and used subject to the terms of the gift or grant.

History: En. 75-8429 by Sec. 29, Ch. 2, L. 1971.

14 C.J.S. Colleges and Universities § 12. 15 Am. Jur. 2d 618, Colleges and Universities, § 33.

Collateral References

Colleges and Universities \$\infty\$6(2).

CHAPTER 85

ADMINISTRATION OF UNIVERSITY SYSTEM

Part 1. Regents

Section 75-8501. Powers and duties.

75-8502. Regulation of award of degrees-penalty.

75-8503. Powers of regents.

75-8503.1. Student building fees at Montana state university. 75-8503.2. Motor vehicle regulation—parking and operation.

75-8503.3. Motor vehicle regulation—enforcement of regulations—appeals.

75-8504. Borrowing by regents.75-8505. State not obligated.

75-8506. Units of financing.
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Part 2. Local Executive Boards

Section 75-8510. Local executive boards, terms, and compensation. 75-8511. Powers of local executive boards.

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Section 75-8512. President—powers and duties.

75-8513. Security department members—appointment—powers.

75-8514. Traffic citations—agreements with city or county.

75-8515. Control and direction of security department.

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Part 1

Regents

- 75-8501. Powers and duties. The state board of education shall serve ex officio as regents of the Montana university system, shall use and adopt this style in all its dealings therewith, and shall:
- (1) Have general control and supervision of the units of the Montana university system, which shall be considered for all purposes one university.
- (2) Adopt rules and regulations, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law.
- (3) Provide, subject to the laws of the state, rules and regulations for the government of the system.
- (4) Grant diplomas and degrees to the graduates of the system, upon the recommendation of the faculties, and have discretion to confer honorary degrees, upon persons other than graduates, upon the recommendation of the faculty of such institutions.
 - (5) Adopt and use, in the authentication of its acts, an official seal.
 - (6) Keep a record of its proceedings.
 - (7) Report as provided in section 82-4002, R. C. M., 1947.
- (8) Have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system.
- (9) Receive from the state board of land commissioners, other boards, persons, or from the government of the United States, all funds, incomes, and other property the system may be entitled to, and use and appropriate the property for the specific purpose of the grant or donation.
- (10) Have general control of all receipts and disbursements of the system.
- (11) Appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees and fix their compensation.
- (12) Appoint an executive secretary of the system, who shall not be a unit president, fix his term of office and salary, and generally prescribe his duties.
- (a) The executive secretary is not a member of the board, but he shall serve as the secretary for the regents.

- (13) Appoint every two (2) years a budget committee composed of four (4) members selected from the appointive members of the regents which shall review the budget requests presented by the units of the system and transmit such requests and its recommendations to the regents.
- (14) Confer upon the executive board of each of the units of the system, such authority as may be deemed expedient, relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty.
- (15) Confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit such authority relating to the immediate control and management, other than financial, and the selection of teachers, and employees.
- (16) Prevent unnecessary duplication of courses at the units of the system.
- (17) Investigate the needs of the units by each member of the regents visiting each unit at least once each year.
- (18) Appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who shall be designated the state geologist, and appoint any other necessary assistants and employees, and fix their compensation.
- (a) The regents shall prepare a report to each regular session of the legislative assembly showing the progress and condition of the bureau including any other necessary or required information.
- (19) Supervise and control the agricultural experiment station along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents.
- (20) Adopt a seal bearing on its face the words "Montana university system," which shall remain in the custody of the executive secretary, and which shall be affixed to all diplomas and all other paper, instruments, or documents which may require it.

History: En. 75-8501 by Sec. 30, Ch. 2, L. 1971.

Cross-References

Community college district budget, approval, sec. 75-8126.

Control and supervision of state university by board, composition of board, Const., Art. XI, sec. 11.

Security department members, appointment, sec. 75-8513.

Actions against Board of Education

The board of education may be sued for a breach of contract without the consent of the state to the action. Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

Delegation of Powers

The board of education is restricted from delegating to college officials its

power to select teachers or instructors. Brown v. State Board of Education, 142 M 547, 385 P 2d 643.

Employment Relationship with Faculty

The relationship between the state board of education and a professor of the state university is that of employee and employer, contractual in character. State ex rel. Phillips v. Ford, 116 M 190, 198, 151 P 2d 171.

Exclusive Control of Funds Derived from Land Grant

The state board of education was vested with exclusive power to receive and control the funds derived from lands granted the state for the use of its institutions of learning, among them the state normal school, and therefore was free from the limitations and restrictions of the constitution as to the expenditures of the ordi-

nary revenues of the state, to wit, only on appropriations made by the legislature and on warrants drawn by the state auditor. State ex rel. Blume v. State Board of Education, 97 M 371, 379, 34 P 2d 515.

Implied Powers

The power expressly granted to the board of education to manage and control the business and finances of the state education institutions carried with it the implied power to do all things necessary and proper to the exercise of its general powers. State ex rel. Veeder v. State Board of Education, 97 M 121, 133-141, 33 P 2d 516.

The state board of education, proceeding under Ch. 24, Ex. Sess. Laws 1933-34 (an emergency measure), continued in force until July 1, 1937 by Ch. 135, Laws 1935 and under chapters 79-83, R. C. M. 1935 had implied authority to authorize the construction of a chemistry-pharmacy building at the state university with funds granted by the federal government in addition to those to be secured by a bond issue. State ex rel. Dragstedt v. State Board of Education, 103 M 336, 338, 62 P 2d 330.

Pledge of Land Grant Income

Under the facts presented, and under prior decisions, a pledging of a portion of the income and interest from the land grant is permissible. State ex rel. Dragstedt v. State Board of Education, 103 M 336, 340, 62 P 2d 330. See also State ex rel. Wilson v. State Board of Education, 102 M 165, 172, 56 P 2d 1079.

Resignation of Faculty Member

A provision of the rules and regulations of the state board of education that the president of the state university shall report appointments and resignations of members of the faculty and other employees did not authorize the president to accept the resignation of a professor of the institution, but merely required him to report it to the state board. State ex rel. Phillips v. Ford, 116 M 190, 199, 151 P 2d 171.

Vested Right Created by Regulation

A regulation of the state board of education providing that reappointment of a professor after three years of service shall be deemed a permanent appointment, under which the board had functioned for some twenty-one years, was valid and clearly within its authority under Const., Art. XI, sec. 11, and this section; reappointment of a professor after such years of service was a permanent appointment, and his status not changed by the board's striking the regulation from its rules and regulations printed on the back of the sixth contract, because he came within the regulation upon execution of his fourth annual contract. State ex rel. Keeney v. Ayers, 108 M 547, 554, 92 P 2d 306, distinguished in 120 M 63, 78, 180 P 2d 472.

Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities § 18. 15 Am. Jur. 2d 596 et seq., Colleges and Universities, § 11 et seq.

Regulations as to school fraternities. 10 ALR 3d 389.

75-8502. Regulation of award of degrees—penalty. (1) No person, corporation, association, or institution shall issue any degree, or such similar literary honors as are usually granted by universities or colleges without the prior approval of the regents of the adequacy of the course of study.

- (a) This section does not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by the regents to be generally recognized by state and other universities in the United States.
 - (2) Violation of this section is a misdemeanor.

History: En. 75-8502 by Sec. 31, Ch. 2, L. 1971.

Cross-Reference

Community college not to grant baccalaureate degree, sec. 75-8126.

Collateral References

Colleges and Universities 5; Schools and School Districts 178.

14 C.J.S. Colleges and Universities § 8; 79 C.J.S. Schools and School Districts § 508.

15 Am. Jur. 2d 614, Colleges and Universities, § 28.

75-8503 SCHOOLS

75-8503. Powers of regents. The regents of the Montana university system may:

- (1) Purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities: land, residence halls, dormitories, houses, apartments and other housing facilities; dining rooms and halls, restaurants, cafeterias and other food service facilities; student union buildings and facilities; and those other facilities specifically authorized by joint resolution of the legislative assembly.
- (2) Rent housing facilities and provide food and other services to the students, officers, guests and employees of the unit at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves, and provide for the collection of charges, admissions and fees for the use of other facilities by students and other persons, which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-8601 of the Revised Codes of Montana, 1947, and may be collected from any or all students. Student building fees established and in effect on January 1, 1965 which are imposed uniformly upon all students, or upon all of a specified class of students in attendance at any unit of the Montana university system, shall not be increased without authorization by law, unless absolutely necessary and then only to the extent necessary to pay principal or interest due on obligations for which such fees have been or shall be pledged, or to maintain reserves securing the payment of such obligations, in accordance with the indentures, resolutions, contracts or other instruments authorizing the issuance of such obligations; provided that at any unit of the Montana university system where the aggregate amount of student building fees in effect on January 1, 1965, was less than fifty dollars (\$50) per student per academic year, such fees may be increased or additional student building fees may be established, to an aggregate amount not exceeding fifty dollars (\$50) per student per academic year, and provided further that additional student building fees may be established or existing student building fees may be increased at the university of Montana, at Missoula, to an aggregate amount not to exceed ninety dollars (\$90) per student per academic year. This limitation shall not affect admission or use charges, which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made to nonresident students as defined in section 75-8601, R. C. M., 1947.
- (3) Hold the net income derived from the operation of such facilities and the charges, admissions and fees so collected and devote the revenues from these sources to debt service and reserves, repairs, replacements and betterments of the facilities or, so far as such revenues have not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging or improvement of additional facilities of the types described in this section.
 - (4) Exercise full control and complete management of such facilities.
- (5) Rent the facilities to other public or private persons, firms and corporations for such uses, at such times, for such periods and at such rates

as in the regents' judgment will be consistent with the full use thereof for academic purposes and will add to the revenues available for capital costs and debt service.

(6) Do all things necessary to plan for, and to propose financing including all necessary loan applications, for classroom, laboratory, library, bookstore and other instructional facilities; office, record-keeping, storage, equipment maintenance and other administrative and operational facilities; stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools and other facilities for athletic and military instruction, exhibitions, games and contests; auditoriums, theaters, music halls and other assembly, theatrical, musical and entertainment facilities; hospital, nursing and other health instruction and service facilities; nurseries, barns, arenas, pavilions and other facilities for agricultural and livestock breeding, development and exhibition; parking lots and ramps and other parking facilities; and land needed for such facilities.

History: En. 75-8503 by Sec. 32, Ch. 2, L. 1971.

14 C.J.S. Colleges and Universities § 18. 15 Am. Jur. 2d 596 et seq., Colleges and Universities, § 11 et seq.

Collateral References

Colleges and Universities 7.

75-8503.1. Student building fees at Montana state university. state board of education of the state of Montana, ex officio regents of the Montana university system, is authorized to establish and collect student building fees, for all students or for all of any specified class of students in attendance at Montana state university, Bozeman, Montana, in the amount of nine dollars and twenty-five cents (\$9.25) per student for each quarter of the academic year and for each summer session, and to pledge the receipts of such fees for the payment of the cost of acquisition, construction, and equipment of physical education, athletic, and recreation facilities at the university or of the principal and interest on revenue bonds to be issued to finance such facilities, in accordance with the provisions of Title 75, chapter 85, R. C. M. 1947. Three dollars (\$3) of the fee so authorized is included in the student building fees established and in effect at the university on January 1, 1965, and the remainder is authorized as an increase in such fees pursuant to section 75-8503, R. C. M. 1947.

History: En. Sec. 1, Ch. 223, L. 1971.

Compiler's Notes

Chapter 372, Laws 1969 which appropriated \$2,600,000 from the earmarked revenue fund to Montana State University for construction of physical education, athletic and recreation facilities, provided for a maximum student assessment fee, and provided that construction should be-

gin only upon approval of the board of education and the affirmative vote of a majority of the student body voting on the issue, was repealed by Sec. 2, Ch. 223, Laws 1971.

Collateral References

15 Am. Jur. 2d 605, Colleges and Universities, § 19.

75-8503.2. Motor vehicle regulation — parking and operation. The regents of the Montana university system, are authorized to make rules and regulations at each unit of the university system concerning the

parking and operation of motor vehicles upon the grounds, streets, drives and alleys of each unit.

History: En. Sec. 1, Ch. 398, L. 1971.

75-8503.3. Motor vehicle regulation—enforcement of regulations—appeals. The regents may authorize the president of each unit to:

- (a) Assess fees not to exceed ten dollars (\$10) per quarter for parking on campus.
- (b) Assess fines for violations of motor vehicle or parking regulations of each unit in an amount not to exceed one dollar (\$1) per offense; the use of parking meters shall not be authorized unless installed prior to June 1, 1971.
- (c) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control.
- (d) Order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator.
- (e) Establish a system of appeals at each unit concerning parking violations.
- (f) Withhold the amount of any unpaid parking fine from any amount owing any student, employee or faculty member, subject to the concurrence of the state auditor under the provisions of section 79-101.

History: En. Sec. 2, Ch. 398, L. 1971.

Cross-Reference

Agreements with city or county for issuance of citations, sec. 75-8514.

75-8504. Borrowing by regents. In carrying out the above powers, the regents may:

- (1) Borrow money for any purpose or purposes stated in this chapter, including, if deemed desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for one (1) year thereafter and the creation of a reserve for the payment of bond principal and interest.
 - (2) Make purchases on a time or installment basis.
- (3) Issue bonds, notes and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds, or bonds registered as to ownership of principal only.
- (4) Pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes or other securities authorized in this chapter or otherwise obligate:
- (a) the net income received from rents, board or both in housing, food service and other facilities;
- (b) receipts from student building, activity, union and other special fees prescribed by the regents for all students; and

- (c) other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property, receipts from athletic and other contests, exhibitions and performances and collections of admissions and other charges for the use of facilities including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions.
- (5) Make payments on loans or purchases from any other available income not obligated for such purposes, including receipts from sale of materials, equipment and fixtures of such facilities, or from sales of the facilities themselves other than land.
- (6) Secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana, or by a resolution establishing covenants of the regents with the holders of such bonds, relating to the construction, operation, use and insurance of the facilities, the segregation, expenditure and audit of accounts of the bond proceeds and of the income pledged, the establishment and collection of rents, charges, admissions and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose, and such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds.
- (7) Issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations heretofore or hereafter issued by the regents, subject to the following provisions:
- (a) Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded, or by a pledge of different or additional revenues received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.
- (b) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding

75-8504 SCHOOLS

bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation is at least three-eighths of one per cent (3% of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

- (c) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars (\$1,000,000) and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption from the proceeds of the refunding bonds, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at said redemption date, and any premium required for redemption on such date; and the resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.
- (d) Revenues or other funds on hand, in excess of amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (c) hereof, to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.
- (8) Sell bonds and sell or exchange refunding bonds issued hereunder in such manner and upon such terms as to maturities, interest rates and redemption privileges, and for such price, as the regents shall determine with the approval of the state controller.

History: En. 75-8504 by Sec. 33, Ch. 2, L. 1971.

Election To Approve Bonds Not Required

While Ch. 24, Laws Ex. Sess. 1933-34 (an emergency measure authorizing construction of public works to alleviate unemployment and the borrowing of money for that purpose) provided for submission of

indebtedness to electors, an election was not required where no part of the debt created was to be repaid from taxes levied. State ex rel. Dragstedt v. State Board of Education, 103 M 336, 340, 62 P 2d 330.

Collateral References

Colleges and Universities € 6(1). 14 C.J.S. Colleges and Universities § 10.

75-8505. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. 75-8505 by Sec. 34, Ch. 2, L. 1971.

75-8506. Units of financing. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the Montana university system may be considered as one; but income received at one (1) unit shall not be used to discharge obligations created for facilities at another unit.

History: En. 75-8506 by Sec. 35, Ch. 2, L. 1971.

75-8507. Restriction on use of state funds. No state funds except those specified in section 75-8504 shall be obligated or used for the purposes of this chapter, unless specifically directed by the legislative assembly.

History: En. 75-8507 by Sec. 36, Ch. 2, L. 1971.

75-8508. Previous contracts unimpaired. This chapter shall not impair any contract, indenture or agreement executed under previous laws.

History: En. 75-8508 by Sec. 37, Ch. 2, L. 1971.

- 75-8509. Prior obligations not affected. No provision of this chapter shall affect or impair: (1) any contract or undertaking, or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to the effective date of this chapter; and
- (2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to the effective date of this chapter.

History: En. 75-8509 by Sec 38, Ch. 2, Compiler's Note

L. 1971.

The effective date of this chapter was January 18, 1971.

Part 2

Local Executive Boards

- 75-8510. Local executive boards, terms, and compensation. (1) There is a local executive board for each unit of the system.
- (a) Each local executive board shall consist of three (3) members appointed by the governor, with the advice and consent of the regents.
- (i) The president of each unit shall not be a member of the local executive board.
- (ii) Two (2) of the members must reside in the county where the unit is located.
- (iii) All vacancies shall be filled by appointment by the governor and referred to the regents at their first meeting thereafter for confirmation.
- (b) Each local executive board shall elect a chairman and appoint a secretary.
- (2) The members shall hold office for three (3) years beginning the third Monday in April of the year appointed.
 - (a) The members may be removed by the governor or the regents.
 - (b) The term of office of one member shall expire each year.
- (c) The members shall qualify by filing their oath of office with the regents.
 - (3) The compensation for the members shall be fixed by the regents.
- (a) It shall not exceed five dollars (\$5) for each day spent in discharging their duties nor one hundred and twenty-five dollars (\$125) in any one (1) year for each member.
- (b) The member shall be reimbursed from the amount appropriated by the legislative assembly for the maintenance and support of the units for all expenses necessarily incurred in discharge of their duties.

History: En. 75-8510 by Sec. 39, Ch. 2, L. 1971.

14 C.J.S. Colleges and Universities § 17. 15 Am. Jur. 2d 596-599, Colleges and Universities, §§ 11,12.

Collateral References

Colleges and Universities 7.

- 75-8511. Powers of local executive boards. Each local executive board shall:
 - (1) Meet at least once in each quarter, and oftener if required.
- (2) Have such immediate direction and control, other than financial, of the affairs of the respective units as may be conferred by the regents.

History: En. 75-8511 by Sec. 40, Ch. 2, L. 1971; amd. Sec. 1, Ch. 351, L. 1971.

Collateral References
Colleges and Universities €-7.
14 C.J.S. Colleges and Universities § 18.

Part 3

Presidents

75-8512. President—powers and duties. Subject to the supervision of the regents, the president of each of the units of the system shall:

- (1) have the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;
- (2) be the president of the general faculty, and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;
- (3) have the duties of one of the professorships as long as the interests of the unit require it;
 - (4) perform the duties of corresponding secretary for the unit;
- (5) make an annual report to the regents containing such information as they may request; and
- (6) furnish any special report on request of the regents or the legislative assembly.

History: En. 75-8512 by Sec. 41, Ch. 2, L. 1971.

- 75-8513. Security department members appointment powers. The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system, as such security departments are constituted on July 1, 1971, or may thereafter be constituted. Persons employed and compensated as members of the said security departments when so appointed are peace officers; however, such peace officers shall not exercise their authority except
- (a) upon the campuses of the Montana university system and for campus-related activities an area within one (1) mile of the exterior boundaries of each thereof, and
- (b) in or about other grounds or properties owned, operated, controlled or administered by the regents or any unit of the Montana university system. Such officers shall have no power to serve and execute civil processes.

History: En. Sec. 1, Ch. 405, L. 1971.

75-8514. Traffic citations—agreements with city or county. The president of each unit may in his discretion enter into an agreement with the city or county in which his unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws which occur within the boundaries of the campus or on streets or alleys contiguous thereto. All such citations shall be considered within the jurisdiction of the appropriate local authority, and shall be handled in the same manner as citations issued by peace officers of such local authority.

History: En. Sec. 2, Ch. 405, L. 1971.

Cross-Reference

Vehicle regulation, secs. 75-8503.2, 75-8503.3.

75-8515. Control and direction of security department. The president of each unit shall have general control and direction of the security department of his unit.

History: En. Sec. 3, Ch. 405, L. 1971.

75-8516. Firearms. Security guards shall be authorized to carry firearms between sunset and sunrise and at any time when acting as guards for transportation of money or other valuables.

History: En. Sec. 4, Ch. 405, L. 1971.

CHAPTER 86

FINANCE FOR UNIVERSITY SYSTEM

Section 75-8601. Charges for tuition-waiver of nonresident fees.

75-8602. Support of university of Montana.

75-8603. Acceptance and use of grant and income from sale of products. Acceptance of Acts of Congress.

76-8604.

75-8605. Receipt of funds.

Experimental farms. 75-8606.

75-8607. Wool laboratory funds and fees.

75-8608. Fees for assays and analyses.

75-8609. Control of expenditures. 75-8610. Donations, grants, gifts.

75-8601. Charges for tuition—waiver of nonresident fees. (1)The regents may:

- prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.
- (b) waive at their discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two per cent (2%) of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of two per cent (2%) of unit enrollment for nonresident students who enroll at Montana college of mineral science and technology under provisions of the WICHE sponsored eight (8) state reciprocal agreement for mineral engineering education.
- (2) No nonresident student may be admitted to the exclusion of any resident student.

History: En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971.

Compiler's Note

Section 75-8601 was amended three times in 1971, once by Ch. 231, § 1 (approved March 9, 1971), once by Ch. 286, § 1 (approved March 11, 1971) and once by Ch. 432, § 1 (approved March 18, 1971). None of the amendments mentioned any of the other amendments. The compiler has made a composite section incorporating the changes made by all the amendments. Ch. 432 deleted a first subsection reading: "Except in the law and medicine departments and for extra studies, tuition

shall ever be free to all students who shall have been residents of the state for not less than one year next preceding their admission to any unit of the Uni-versity of Montana" ["Montana university system" in Chs. 231 and 286] and redesignated subsections (2) and (3) as (1) and (2). Ch. 432 rewrote subdivision (2) (a) which read: "prescribe tuition rates for students enrolled in the law school or for extra studies, and for nonresident students; and." In subdivision (2) (b), Ch. 231 added . . "except . . mineral engineering education"; Ch. 286 substituted "full-time . . . year" for "total number of students enrolled at that unit"; and Ch. 432 substituted "their" for "its" before "discretion" fore "discretion."

Cross-References

Free tuition to residents of state vocational schools for girls or state industrial school, sec. 80-2213.

Free tuition to veterans, sec. 77-901

et seq.

Western Interstate Commission for Higher Education, sec. 75-4901 et seq.

Students' Union Fee Not Prohibited

Provision that tuition be free to resident students at the state educational institutions did not bar board of education from collecting a students' union fee, as a condition precedent to entry, to

assist in creating a fund out of which a contemplated bond issue to defray the expenses of the erection of a students' union building was to be paid, "tuition" not embracing the principal purposes for which the building was intended to be used. State ex rel. Veeder v. State Board of Education, 97 M 121, 133, 33 P 2d 516.

Collateral References

Colleges and Universities 9. 14 C.J.S. Colleges and Universities

§§ 27, 28. 15 Am. Jur. 2d 604, Colleges and Uni-

versities, § 18.

- 75-8602. Support of university of Montana. (1) For the support and endowment of the university there is annually and perpetually appropriated:
- (a) the university fund income, and all other sums of money appropriated by law thereto;
 - (b) all tuition and matriculation fees; and
 - all contributions derived from public or private bounty.
- The entire income of all such funds shall be placed at the disposal of the regents by transfer to its treasurer, and shall be kept separate and distinct from all other funds.
- (a) The income shall be used solely for the support of the colleges and departments of the university or those connected therewith.
- All means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the donor.

History: En. 75-8602 by Sec. 43, Ch. 2, L. 1971.

Cross-Reference

Funds to remain inviolate to purpose for which dedicated, investment, Const., Art. XI, sec. 12.

Collateral References

Colleges and Universities 2. 14 C.J.S. Colleges and Universities § 9. 15 Am. Jur. 2d 616, Colleges and Universities, § 30.

- 75-8603. Acceptance and use of grant and income from sale of prod-The state of Montana assents to the provisions of an Act of Congress entitled: "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," approved March 16, 1906, and consents to receive the benefits thereof in the manner and for the purposes intended and provided in the act.
- The agricultural experiment station shall be the beneficiary of the funds in the act and shall use the funds only for the purposes therein provided.
- (3) The treasurer of Montana state university shall receive, hold and account for the funds, and make reports to the secretary of agriculture as required by the act.

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(4) Any income received from the sale of agricultural products by the station or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. 75-8603 by Sec. 44, Ch. 2. L. 1971.

Compiler's Note

The Act of March 16, 1906, referred to

above, was repealed by Act of August 11, 1955, c. 790, § 2, 69 Stat. 674. Existing rights and liabilities were not affected by the repeal.

- 75-8604. Acceptance of Acts of Congress. (1) The state accepts and assents to the terms and provisions of the Act of Congress, approved May 8, 1914, entitled: "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an Act of Congress approved July second, eighteen hundred and sixty-two, and of act supplementary thereto, and the United States department of agriculture."
- (2) The president of Montana state university may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of said act.
- (3) He may receive and expend such money in accordance with the provisions of said act and any agreements so made.

History: En. 75-8604 by Sec. 45, Ch. 2, L. 1971.

Compiler's Note

The Act of May 8, 1914, referred to above, is compiled in the United States Code as Tit. 7, secs. 341 to 348.

75-8605. Receipt of funds. (1) The treasurer of Montana state university may receive:

- (a) the cash appropriation received from the United States by authority of the Act of Congress of August 30, 1890, known as the second Morrill Act, and the Act of Congress of March 4, 1907, known as the Nelson Amendment, to be expended by the executive board under the general supervision of the regents only for the purpose for which it was appropriated by Congress; and
- (b) all moneys appropriated by the Act of Congress of March 16, 1906, entitled: "An act to provide for and increase the annual appropriation for agricultural experiment stations and regulating the expenditures thereof," to be expended under the supervision of the regents in the manner designated in the Act of Congress and as required by section 75-8604, R. C. M., 1947.
- (2) On or before September 1 of each year the state university shall make detailed reports of the amounts received and disbursed under the provisions of the Acts of Congress of March [August] 30, 1890, of March 4, 1907, and of March 16, 1906, to the secretaries of agriculture and interior of the United States, as required by the Acts of Congress, and shall file duplicates with the state board of examiners on or before September 10 of each year.

History: En. 75-8605 by Sec. 46, Ch. 2, L. 1971.

Compiler's Notes

The second Morrill Act, referred to above, is compiled in the United States Code as Tit. 7, secs. 321 to 328; the

Nelson amendment is compiled as Tit. 7, sec. 322.

The Act of March 16, 1906 was repealed by Act of August 11, 1955, c. 790, § 2, 69 Stat. 674. Existing rights and liabilities were not affected by the repeal.

- 75-8606. Experimental farms. (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana trust and legacy fund credited to the state university through provisions of the Morrill Land Act of 1862 known as the Agricultural College Morrill Permanent Fund, a sum not to exceed ten per cent (10%) of the amount of such fund.
- (2) The total amount which may be used for purchase of needed lands for sites or experimental farms may not exceed ten per cent (10%) in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent account in the Montana trust and legacy fund.
- (3) No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation, or repair of any building or buildings.
- (4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university.

History: En. 75-8606 by Sec. 47, Ch. 2, L. 1971.

Compiler's Note

The Morrill Act of 1862, referred to above, is compiled in the United States Code as Tit. 7, secs. 301 to 308.

- 75-8607. Wool laboratory funds and fees. (1) The wool laboratory shall:

- (a) co-operate fully with the United States department of agriculture for the benefit of the Montana wool industry; and
- (b) keep a complete and comprehensive system of records covering its internal administration, activities and meetings of its advisory committee, and all sampling, testing and research work.
 - (2) The wool laboratory may:
- (a) receive any moneys which the federal government may make available for the use of the laboratory, and pay all such funds to the state treasurer to be deposited in a special trust fund; and
- (b) receive donations from individuals for the purposes of the laboratory, which shall also be paid to the state treasurer to be deposited in the special trust fund.
- (3) All federal funds which may be provided and all funds which may be received by the laboratory for its use and benefit are hereby appropriated for the Montana wool laboratory.

- (4) All moneys collected by the Montana wool laboratory shall be used for the payment of salaries and expenses, including purchase of equipment and supplies, and the erection of necessary buildings.
- The laboratory shall charge fees to woolgrowers which will cover actual costs for furnishing specific testing services. Such fees shall not include costs of doing research.

History: En. 75-8607 by Sec. 48, Ch. 2, L. 1971.

- 75-8608. Fees for assays and analyses. (1) The president of Montana college of mineral science and technology may charge and collect reasonable fees for any assays and analyses made by the college.
- The president shall keep an account of such fees and pay them monthly to the treasurer for deposit to the college fund.

History: En. 75-8608 by Sec. 49, Ch. 2, L. 1971.

Control of expenditures. Pursuant to the terms of appropriations of the legislative assembly or of Congress or of gifts of donors, the regents shall determine the need for all expenditures, and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with the state purchasing agent.

History: En. 75-8609 by Sec. 50, Ch. 2, L. 1971.

75-8610. Donations, grants, gifts. All donations, grants, gifts, or devises shall be made to each unit in its legal name. If made to any officer or board of the unit, they shall be immediately transferred to the unit.

History: En. 75-8610 by Sec. 51, Ch. 2, L. 1971.

14 C.J.S. Colleges and Universities § 12. 15 Am. Jur. 2d 618, Colleges and Universities, § 33.

Collateral References

Colleges and Universities 6(2).

CHAPTER 87

STUDENTS IN UNIVERSITY SYSTEM

Section 75-8701. Qualification of students.

75-8702. Definitions.

75-8703. Presumptions as to domicile.

75-8704. Evidence as to domiciliary intent—changes in status. 75-8705. Indians—nonpayment of fees.

75-8701. Qualification of students. The university system is open to all people subject to such uniform regulations as the regents deem proper. All able-bodied male students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971.

Cross-References

Admission not to be denied on account of sex, Const., Art. XI, sec. 9.

Confidential relationship between student and school personnel, sec. 93-701-4. Instruction of men and women on equal terms, sec. 75-8401.

75-8702. Definitions. Terms used in this chapter are defined as follows:

- (1) "domicile" means person's true, fixed, and permanent home and place of habitation;
- (2) "emancipated minor" means person under the age of nineteen (19) years who supports himself from his own earnings or is married.
- (a) A person who received more than twenty-five per cent (25%) of the cost of supporting himself from any person other than an agency of the government shall not be considered an "emancipated minor."
- (3) "minor" means male or female person who has not obtained the age of nineteen (19) years.
- (4) "qualified person" means person legally qualified to determine his own domicile.
 - (5) "Resident student" means:
- (a) A student who has been domiciled in Montana for one (1) year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana.
- (b) Any graduate of a Montana high school whose parents, parent, or guardian have resided in Montana at least one (1) full year of the two (2) years immediately preceding his graduation from high school. Such classification shall continue for not more than four (4) academic years if the student remains in continuous attendance at a unit.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971.

Compiler's Note

Compiler's Note
Section 75-8702 was amended twice in
1971, once by Ch. 240, §17 (approved
March 9, 1971) and once by Ch. 395, §1
(approved March 15, 1971). The amendments are not reconcilable. Ch. 240 lowered the age mentioned in the definition
of "emancipated minor" in subdivision
(2) and "minor" in subdivision (3) from
twenty-one to nineteen. Chapter 395 lowered the age mentioned in the definition

of "emancipated minor" from twenty-one to eighteen but made no change in the definition of "minor"; it also deleted "or part-time" from the definition of "resident student" in subdivision (5) (a). The compiler has made a composite section including the age changes as made by Ch. 240 and the deletion of part-time students as made by Ch. 395 since Ch. 240 was a general act lowering the age of majority to nineteen in many sections throughout the code and the portion of the title of Ch. 395 relating to this section referred only to the deletion of part-time students.

75-8703. Presumptions as to domicile. Unless the contrary appears to the unit registering authority, it is presumed that:

- (1) The domicile of a minor is that:
- (a) of his father; or
- (b) of his mother if there is no father; or
- (c) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state; or

- (d) of the parent who has custody of the minor.
- (2) The domicile of a married woman is that of her husband, except that a resident woman student who marries a nonresident does not by that fact alone lose her resident status for tuition and fee purposes for a period of four (4) years after her marriage.
- (3) Except as provided in the next subsection, residence is not gained or lost because of relocation as a member of the armed forces of the United States.
- (4) Residence may be gained by a member of the armed forces of the United States, his spouse, or his children by living in Montana for one (1) year, and complying with the provisions of this section.
- (5) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.
- (6) Domicile is not lost by absence from Montana with no intention to establish a new domicile.
- (7) Montana high school graduates are resident students of the system for four (4) consecutive years of attendance if:
- (a) they apply for admittance to the system within one (1) year after graduation; or
- (b) their parents have resided in Montana in one (1) of the two (2) years immediately preceding the graduation.
- (8) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child or both. If such person meets the requirement of full-time employment within the state of Montana and he files for the payment of Montana state income taxes, or files estimates of such taxes, or is subject to withholding of said taxes, and renounces his residency in any other state, and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the instate rate, so long as he continues his Montana domicile. In the administration of this paragraph, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

History: En. 75-8703 by Sec. 54, Ch. 2, L. 1971; amd. Sec. 2, Ch. 395, L. 1971.

Cross-Reference

General rules for determining residence, sec. 83-303.

Collateral References

Colleges and Universities 9.

14 C.J.S. Colleges and Universities §§ 25, 27.

15 Am. Jur. 2d 606, Colleges and Universities, § 20.

Residence: determination of residence or nonresidence for purpose of admission to public college. 83 ALR 2d 497.

75-8704. Evidence as to domiciliary intent—changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

- (a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of nonMontana domicile.
 - (b) A person must intend to establish a domicile in Montana.
- (2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary:
- (a) A written statement of the evidence shall be filed with the registering authority of the unit.
- (b) Changes in classification shall be in writing signed by the registering authority, and shall take effect at the student's next registration.
- (3) A minor shall qualify for a change in status only if his parents or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.
- (4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependents classification for tuition and fee purposes unless he completes twelve (12) continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.
- (5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system:
- (a) Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary.
- (i) The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons.
- (b) Within thirty (30) days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision.
- (c) The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal.

History: En. 75-8704 by Sec. 55, Ch. 2, L. 1971; amd. Sec. 3, Ch. 395, L. 1971.

- 75-8705. Indians nonpayment of fees. (1) Persons of one-fourth (1/4) Indian blood or more and are bona fide residents of the state of Montana for at least one (1) year prior to enrollment in the Montana university system, completing a four (4) year course of an accredited high school or federal Indian school showing financial need and evidence of studious and industrious habits, may enroll in the university system without the payment of fees.
- (2) Each unit shall make rules governing the selection of these students.

History: En. 75-8705 by Sec. 56, Ch. 2, L. 1971; amd. Sec. 1, Ch. 350, L. 1971.

Collateral References
Indians ⇔8.
42 C.J.S. Indians § 23.
41 Am. Jur. 2d 843, Indians, § 18.

CHAPTER 88

MISCELLANEOUS PROVISIONS RELATING TO UNIVERSITY SYSTEM

Section 75-8801. Research programs—powers of units.

75-8802.

Contract for military training at system. Supplementary education in university system. 75-8803.

75-8804. Endowed professorships.

75-8805. Oath required.

- 75-8801. Research programs—powers of units. (1) The units of the system are authorized, singly or in co-operation, to engage in research and development programs with the prior approval of the regents.
- Such programs may be conducted by any department of a unit or any organization established to assist the unit.
 - A unit or organization may:
- (i) contract with private organizations, companies, firms, or individuals relative to research programs;
- (ii) conduct research programs with the penal, corrective, or custodial institutions of Montana and engage the voluntary participation of the inmates, with the prior approval of the governing board of the institution;
- accept contributions, grants, or gifts from private organizations, companies, firms, individuals, governmental agencies or departments for research programs;
- make agreements or co-operative undertakings with private organizations, companies, firms, individuals, governmental agencies or departments for research programs;
- (v) match the funds of private organizations, companies, firms, individuals, governmental agencies or departments with available funds for research programs;
- accumulate, invest, and expend the funds and proceeds from research programs;
- acquire real and personal property reasonably required for research programs;
- (viii) not divert funds, proceeds, or real and personal property from the research programs; and
- not charge or obligate the state of Montana or the general funds or a unit or agency.
- The legislative assembly declares a public need for scientific research in the units of the system to promote the general welfare and to provide an adequate defense for the United States.
- (4) Notwithstanding any inconsistent provisions of law, including laws relating to advertising for bids or competitive bidding, the state board of examiners may:
- contract with the United States to use the units of the system for (a) research:
- expend money appropriated to a unit to provide personnel, facilities, instructional services and supplies for the contract with the United States:
 - (c) repay sums expended.

(i) Repayment from the United States shall revert to the original fund source.

History: En. 75-8801 by Sec. 57, Ch. 2, L. 1971.

Cross-Reference

Authority for institution inmates to participate, sec. 80-1410.

- 75-8802. Contract for military training at system. Notwithstanding any inconsistent provisions of law, including laws relating to advertising for bids or competitive bidding, the state board of examiners may:
- (1) contract with the United States to train members of the armed forces and attached auxiliaries or persons designated for training by the United States at units of the system;
- (2) expend money appropriated to a unit to provide instructional services, dormitory facilities and board, and supplies for the contract with the United States:
- (3) receive repayment from the United States of sums so expended without competitive bidding.
- (a) Repayment from the United States shall revert to the original fund source.

History: En. 75-8802 by Sec. 58, Ch. 2, L. 1971.

- 75-8803. Supplementary education in university system. (1) To supplement the broad conservation program in the elementary and secondary schools, the units of the university system shall make available to all students in teacher preparatory courses basic instruction in conservation education.
- (2) The units at Bozeman and Missoula shall include instruction in conservation in their community or public service programs.

History: En. 75-8803 by Sec. 59, Ch. 2, L. 1971.

- **75-8804.** Endowed professorships. (1) A person contributing fifteen thousand dollars (\$15,000) or more may endow a professorship in the system or in a department of the system.
- (2) The name and object of the professorships shall be designated by the regents.

History: En. 75-8804 by Sec. 60, Ch. 2, L. 1971.

75-8805. Oath required. (1) Every professor, instructor or teacher employed by any unit of the university system shall subscribe to the following oath or affirmation before some officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support the constitution of the United States of America, the constitution of the state of Montana and the laws of the United States and the state of Montana, and will, by precept and example, promote respect for the flag and the institutions of the United

States and the state of Montana, reverence for law and order and undivided allegiance to the government of the United States of America."

- (2) This oath shall be executed in duplicate before entering upon duty. One (1) copy shall be filed with the president of the employing unit and one (1) copy retained by the subscriber.
- (3) The above requirements shall not apply to exchange professors or temporary employees.

History: En. 75-8805 by Sec. 61, Ch. 2, L. 1971.

Separability Clause

Section 62 of Ch. 2, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Collateral References

Colleges and Universities 8.

14 C.J.S. Colleges and Universities § 21. 15 Am. Jur. 2d 598, Colleges and Universities, § 12.

Validity of governmental requirement of oath of allegiance or loyalty as applied to schoolteachers 18 ALR 2d 319.

Schoolteachers. 18 ALR 2d 319.

Dismissal or rejection of public school teacher because of disloyalty. 27 ALR 2d 487.

CHAPTER 89

HEALTH EDUCATION—DRUG AND ALCOHOL ABUSE INSTRUCTION

Section 75-8901. Purpose of act-legislative intent.

75-8902. Teacher instruction—colleges to offer course.

75-8903. Teacher instruction—course required of education students.

75-8904. High school and junior high school instruction.

75-8905. Alcohol and drug dependency commission.

75-8901. Purpose of act—legislative intent. It is the purpose of this act to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislative assembly intends to require education graduates of any unit of the Montana university system or any private college, or private university in Montana, to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students, and to require all public and private junior high school students and all public and private high school students in Montana to be aware of the problems resulting from drug and alcohol abuse.

History: En. Sec. 1, Ch. 396, L. 1971.

75-8902. Teacher instruction—colleges to offer course. All units of the Montana university system and all private colleges and private universities in Montana that offer any degree in education shall establish a credit course in health education to include drug and alcohol education and abuse by July 1, 1972. The content of the courses established in the Montana university system shall be reveiwed and approved by the board of regents of the Montana university system before being offered for study in the units of the Montana university system.

History: En. Sec. 2, Ch. 396, L. 1971.

75-8903. Teacher instruction—course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college or private university after December 31, 1972, must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded his degree.

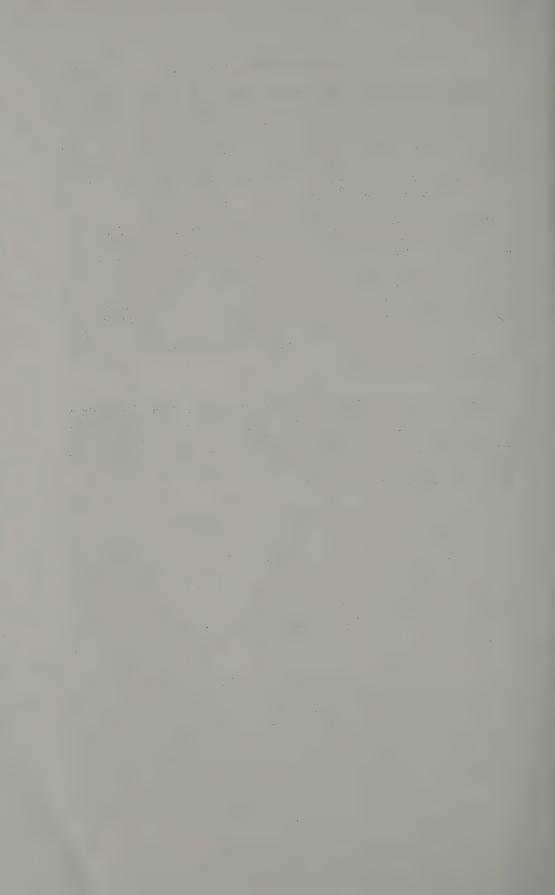
History: En. Sec. 3, Ch. 396, L. 1971.

75-8904. High school and junior high school instruction. All public and private junior high schools and all public and private high schools in the state of Montana shall be required to teach courses in health education to include drug and alcohol abuse to their students commencing as soon as feasible, but in any event not later than the school year commencing July 1, 1972. The content of the courses to be taught in all public junior high schools and all public high schools in Montana shall be reviewed and approved by the superintendent of public instruction before being offered for study in the public junior high schools and public high schools in Montana.

History: En. Sec. 4, Ch. 396, L. 1971.

75-8905. Alcohol and drug dependency commission. That the Montana alcohol and drug dependency commission shall act in an advisory capacity in establishing all courses required under this act, and said courses shall be established only after consultation with and advice by the Montana alcohol and drug dependency commission.

History: En. Sec. 5, Ch. 396, L. 1971.









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